

1 THE UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS (Boston)

3 No. 1:23-cv-10511-WGY
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5
6 UNITED STATES OF AMERICA, et al,
7 Plaintiffs

8 vs.

9
10 JETBLUE AIRWAYS CORPORATION, et al,
11 Defendants

12 *****

13
14 For Bench Trial Before:
15 Judge William G. Young

16
17 United States District Court
18 District of Massachusetts (Boston)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 Tuesday, November 14, 2023

22 *****

23 REPORTER: RICHARD H. ROMANOW, RPR
24 Official Court Reporter
25 United States District Court
One Courthouse Way, Room 5510, Boston, MA 02210
rhrbulldog@aol.com

A P P E A R A N C E S

EDWARD WILLIAM DUFFY, ESQ.

ARIANNA MARKEL, ESQ.

AARON TEITELBAUM, ESQ.

DOJ-Atr

450 Fifth Street NW, Suite 8000

Washington, DC 20530

(202) 812-4723

Email: Edward.duffy@usdoj.gov

and

WILLIAM T. MATLACK, ESQ.

Attorney General's Office

One Ashburton Place, 18th Floor

Boston, MA 02108

(617) 727-2200

Email: William.matlack@mass.gov

For Plaintiffs United States of America and

The Commonwealth of Massachusetts

RYAN SHORES, ESQ.

Cleary Gottlieb Steen & Hamilton LLP

2112 Pennsylvania Avenue, NW

Washington, DC 20037

(202) 974-1876

Email: Rshores@cgsh.com

and

ELIZABETH M. WRIGHT, ESQ.

Cooley LLP

500 Boylston Street

Boston, MA 02116-3736

(617) 937-2349

Email: Ewright@cooley.com

and

RACHEL MOSSMAN ZIEMINSKI, ESQ.

MICHAEL MITCHELL, ESQ.

Shearman & Sterling LLP

2601 Olive Street, 17th Floor

Dallas, TX 75201

Email: Rachel.zieminski@shearman.com

For Defendant JetBlue Airways Corporation

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(Continued.)

JAY COHEN, ESQ.

ANDREW C. FINCH, ESQ.

Paul, Weiss, Rifkind, Wharton & Garrison

1285 Avenue of the Americas

New York, NY 10019-6064

(212) 373-3000

Email: Jaycohen@paulweiss.com

For Defendant Spirit Airlines, Inc.

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- 25

EXHIBIT 698	34
EXHIBIT 699	34
EXHIBIT 700	34
EXHIBIT 705	71

1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 THE COURT: Thank you for all being so prompt.
4 And if you would remind the witness.

5 THE CLERK: Do you understand, sir, that you are
6 still under oath.

7 THE WITNESS: Yes.

8 MR. MOORE: May I proceed, your Honor?

9 THE COURT: You may.

10

11 REDIRECT EXAMINATION BY MR. MOORE: (Continued.)

12 Q. Good morning, Mr. Friedman, I thank you again for
13 your time today.

14 Last Thursday you spoke with your counsel about
15 some exhibits that show schedule changes made by your
16 competitors. Do you recall that?

17 A. Yes.

18 Q. I want to look at those exhibits again. We're going
19 to start with what is marked in your binder, I believe,
20 as Friedman, Summary E, which is Exhibit 696 in the
21 record.

22 MR. MOORE: And, your Honor, we'll be referring to
23 the same binders that we had on Friday, and if you don't
24 have a copy --

25 THE COURT: I do have a copy and that's fine.

1 Q. Mr. Friedman, I want to take a look at one of the
2 brief entries that's listed in this exhibit. Let's go
3 to Row 13.

4 A. (Turns.)

5 Q. The entry in this row shows that Frontier entered
6 the Miami to Punta Cana route. Do you see that?

7 A. Yes.

8 Q. Miami to Punta Cana is one of the JetBlue-Spirit
9 overlap route that you spoke about with your counsel on
10 Thursday, is that right?

11 A. Yes.

12 Q. And according to the summary that you prepared for
13 the Court, Frontier was scheduled to start service on
14 the Miami to Punta Cana route in April of 2023, is that
15 right?

16 A. Yes.

17 Q. But Frontier already provided service on this route
18 prior to the entry date that's listed in this exhibit,
19 correct?

20 A. Um, let's see. So Frontier entered 1X Daily Miami
21 Punta Cana effective April 20th of 2023. It's possible.
22 I can't recall if they were already on the schedule or
23 if they had extended the schedule that already existed.

24 Q. All right. So we can confirm that by going to the
25 other exhibit that you prepared for the Court, which is

1 Friedman 1006 Summary F in your binder, it's Exhibit 697
2 in the record. And to make this easier, we're going to
3 put the exhibits up side-by-side on your screen, but if
4 you prefer to look at them on paper, you can look at
5 them in your binder, both e and f, it might be easiest
6 to pull e out of your binder so you can look at them
7 side by side. And let me know when you have those in
8 front of you.

9 A. (Looks.) It's B and F, correct.

10 Q. Correct. And for a summary app, we're going to be
11 going to Page 26.

12 A. (Turns.) Okay.

13 Q. So we're going to go to Row 510 on Page 26 of
14 Summary Exhibit F. And we'll zoom in on that on the
15 screen.

16 MR. MOORE: And at the same time if we could zoom
17 in on Row 13 on the Summary Exhibit E, so we can have
18 them side by side on the screen. (On screen.) All
19 right.

20 Q. So Row 13 in Summary E and Row 510 in Summary F,
21 both relate to the route between Miami and Punta Cana,
22 correct?

23 A. Um, yes.

24 Q. And we can see in Friedman Summary F that Frontier
25 is described as exiting that route in November of 2022,

1 correct?

2 A. Yes.

3 Q. According to Friedman Summary E though, that service
4 resumed, as we were talking about earlier, in April of
5 2023, so about 5 months later, correct?

6 A. Correct.

7 Q. Would it be fair to describe this as a "seasonal
8 exit reentry" on the route by Frontier?

9 A. Um, let me just confirm real quick. So Miami Punta
10 Cana effective November 6th on August 2022. (Looks.)
11 It's possible. I need to look at the schedules to have
12 more context. Um, regardless I think during this time
13 Frontier entered this route sometime during covid. Um,
14 keeping track of just how dynamic the schedule changes
15 were coming out of covid into perpetuity in steady
16 state, um, and seeing the schedules change, we -- this
17 is how we characterized it at the time. But knowing
18 that there was a lot of in and out coming out of covid
19 into a steady-state environment, it's quite possible
20 this was a seasonal reentry. I don't know offhand, I've
21 got to see the schedules to know. But they did enter
22 this route sometime during the covid time period, I
23 believe, and have continued serving.
24 Q. And seasonal entry user schedule adjustments, those
25 reflect the fact that demand was different in certain

1 times of the year, right?

2 A. Um, yes.

3 Q. And a carrier could enter and exit the same time of
4 year every year but effectively serve the same route
5 year after year, correct?

6 A. Typically when we observe a carrier seasonally
7 reentering we label it as "seasonal reentering." In
8 this case I think there was, because of the -- well
9 because of the historical unknown with covid and then
10 entering in during that time period, we weren't really
11 sure whether they were seasonally reentering, exiting,
12 but they came back into the schedule at this time period
13 and this is how it was reported.

14 Q. Would you describe this route generally as a
15 seasonal route?

16 A. For JetBlue, um, this is not a seasonal route. For
17 Frontier, I can't really comment.

18 Q. Do you know if it was a seasonal route for other
19 carriers?

20 A. Um, for JetBlue, it is not. And I don't believe it
21 is for American out of Miami.

22 Q. Speaking more generally about Summary Exhibit F, do
23 you know how many of the entries in that exhibit, um,
24 whether they're seasonal adjustments and if so how many?

25 A. Um, off the top of my head I do not know how many

1 seasonal reentries or exits were reported.

2 Q. But to the extent that there were seasonal exits and
3 entries, those would all be reflected in Summary Exhibit
4 F, is that fair?

5 A. Um, yes, I believe so.

6 Q. I want to continue with Summary Exhibit F now, and I
7 have a few more questions about this exhibit.

8 So this exhibit is tracking a number of different
9 schedule changes, correct?

10 A. Correct.

11 Q. It includes entries?

12 A. Correct.

13 Q. Exits?

14 A. Yes.

15 Q. It also tracks any changes in the number of flights
16 or frequency use that are offered on the route, correct?

17 A. Yes.

18 Q. And it also tracks extensions of existing schedules,
19 correct?

20 A. Yes.

21 Q. For example, we can see that in the very first row,
22 that's JetBlue B6 extending service on the -- on the
23 Miami route, correct?

24 A. Correct.

25 Q. And that extension, that would not represent any

1 change to at least JetBlue's existing service schedule,
2 correct?

3 A. Um, so for this particular route, um, we had
4 recently exited that route during the covid time period,
5 we had brought it back in, and we had extended that
6 entry throughout the schedule. We're in this case from
7 July 6th through September 5th.

8 Q. So prior to the extension though, JetBlue was
9 offering service again on this route, correct?

10 A. Um, yes.

11 Q. And then you extended service on the route, correct,
12 that's what we see here?

13 A. Correct.

14 Q. And that would just be continuing the existing
15 schedule that JetBlue already had, correct?

16 A. Um, it would be continuing the reentry, um, of the
17 route.

18 Q. A couple of other general questions about this
19 document.

20 I searched the document and I did not see
21 Allegiant mentioned anywhere. Does that sound accurate
22 to you?

23 A. Um, I'll take your word for it.

24 Q. I also only saw one event involving Sun Country.
25 Does that sound accurate to you?

1 A. I did not search it for Sun Country, but if that's
2 the case, that's the case.

3 Q. Do you know how many events involve Breeze in this
4 exhibit?

5 A. No, I do not.

6 Q. Would you be surprised to learn that it's only four?

7 A. Um, nope.

8 Q. And do you know how many events are tracked for
9 Avelo in this exhibit?

10 A. I do not.

11 Q. Would you be surprised to learn that it's 8?

12 THE COURT: Surprised to learn that --

13 MR. MOORE: That it is 8 events.

14 A. Again I have not tracked it. But I'm not surprised.

15 Q. So we'll look at some of the particular entries in
16 this exhibit, and just before we go to those specific
17 examples, I want to confirm.

18 I think you testified on Thursday that you
19 personally reviewed this exhibit to ensure that it
20 accurately described the information contained in each
21 of the documents that are cited, correct?

22 A. Correct.

23 Q. And you tried to make sure that this exhibit was as
24 accurate as possible, correct?

25 A. Yes.

1 Q. All right. Let's go to Page 10 and I want to go to
2 Rows 179 and 180.

3 A. (Turns.)

4 Q. Okay. Looking at these rows, Mr. Friedman, Rows 179
5 and 180 appear to be exact duplicate entries, correct?

6 A. Um, it appears so.

7 Q. And if we go to the next two rows, so Rows 181 and
8 182, and they're on the same page, those also appear to
9 be exact duplicate entries, correct?

10 A. It appears so.

11 Q. And the same thing for 183 and 184?

12 A. Um, it appears so.

13 Q. Do you know how many duplicate entries appear in
14 this exhibit?

15 A. I do not.

16 Q. Well I did check. It appears that there's only
17 five.

18 So I want to talk about the frequency adjustments
19 that we touched on briefly earlier, and to do that let's
20 go to the route between Fort Lauderdale and Richmond,
21 Virginia, it's on Page 27 of Exhibit F. And I'll give
22 you a hard copy of the exhibit.

23 A. (Turns.)

24 Q. And I want to focus on Rows 517 and 518 once you're
25 there.

1 A. (Turns.)

2 Q. So the first schedule change in these two rows,
3 chronologically speaking, is End Row 518, correct? 518?

4 A. Um, yes.

5 Q. In this schedule change we see that JetBlue
6 eliminated one weekly flight on the route between Miami
7 and Richmond, correct?

8 A. Yes.

9 Q. And then in the Row 517, so the next in
10 chronological order, JetBlue eliminated two weekly
11 flights on the same route, correct?

12 A. Um, yes.

13 Q. Both of those changes that we see here are indicated
14 to last for only roughly a month, correct?

15 A. That is correct.

16 Q. So neither of these are an exit from the route by
17 JetBlue, correct?

18 A. No.

19 Q. They're both just adjustments in the number of
20 flights that JetBlue was offering for the weeks for
21 those two ones we're looking at?

22 A. That's correct.

23 Q. Do you know how many events in this exhibit have --
24 only reflect adjustments in frequency use as opposed to
25 entries or exits?

1 A. No, I do not.

2 Q. Would you be surprised to learn that it's roughly
3 550?

4 A. Again I don't know. But not surprised.

5 Q. Do you know how many events in this exhibit only
6 reflect extensions of existing service like the example
7 from Richmond to Miami we looked at earlier?

8 A. No.

9 Q. Would you be surprised to learn that it's 50?

10 A. No.

11 Q. Do you know how many events in this exhibit actually
12 reflect full entries or exits into the routes?

13 A. Full entries? I believe it was roughly 19 entry
14 events across 16 different routes, if I remember
15 correctly.

16 Q. And what about exits?

17 A. Exits? I do not recall.

18 Q. Would you be surprised to learn there's only roughly
19 50 total across entries and exits across the entire
20 exhibit?

21 A. Again I wouldn't be surprised, there's a lot of
22 movement that occurs.

23 Q. So 50 across the 718 entries put together in this
24 exhibit, correct?

25 A. I think it's 50 across 51 routes. And then of the

1 718 total activities, it's, um, I suppose 50 would be
2 the, um, or 50 out of 718.

3 Q. Okay.

4 MR. MOORE: We can put this exhibit aside.

5 Q. I want to turn to a different topic now.

6 On Thursday you spoke with your counsel about the
7 24 percent revenue premium you calculated in the deal
8 modeling, do you recall that?

9 A. Yes.

10 Q. You never attempted to revise that 24 percent
11 revenue premium after the deal modeling was presented to
12 JetBlue's board of directors, correct?

13 A. I'd like to be clear on two parts. I'm not sure if
14 the 24 percent was ever directly reported to the board.
15 Um, I can't recall if it was in that presentation. I
16 don't think it was. Originally, however, in the 2019
17 work, it was, um, a factor of 1.33, which we then
18 revised to 1.24. So there was an iterative process
19 around that number.

20 Q. So let's break down both of those pieces. You
21 mentioned that you weren't sure if the 24 percent
22 revenue premium was presented to the board, is that what
23 you testified?

24 A. Yeah, I don't think it was.

25 Q. However it was used to calculate the customer

1 service premium that was presented to the board,
2 correct?

3 A. It was used to calculate that synergy.

4 Q. And the 1.33 you mentioned earlier, that was an
5 earlier iteration of the transaction in which that was
6 -- the revenue premium was calculated, correct?

7 A. Correct, which we then revised down to 1.24.

8 Q. And the 1.33, if you used that number, JetBlue would
9 earn even more revenues per unit of capacity, correct,
10 compared to the number that you used?

11 A. If we had used that figure, it would have resulted
12 in more revenue synergies.

13 Q. You never told the board of directors that the
14 Customer Service Premium that was presented might be
15 wrong, correct?

16 A. I did not tell the board anything.

17 Q. So that's a "no." And you're not aware of anyone
18 else at JetBlue, um, telling the board that the 24
19 percent revenue premium was somehow inaccurate or
20 incomplete, correct?

21 A. I'm not aware of what was said and what wasn't said.
22 I did not interact with the board.

23 Q. And you personally have never revised the revenue
24 premiums to account for an example for JetBlue lowering
25 fares or expanding the market after its entry, correct?

1 A. So again, as part of the revenue synergy or the
2 customer premium synergy, we specifically left out the
3 JetBlue Effect to get to a more conservative figure.

4 Q. And you never revised the 24 percent revenue premium
5 to account for what you're calling the "JetBlue Effect,"
6 correct?

7 MR. MITCHELL: Objection, your Honor, asked and
8 answered.

9 THE COURT: He may have it. Overruled.

10 THE WITNESS: I apologize, can you say it again?

11 THE COURT: Yes, he'll ask it again.

12 Q. And you never revised the 24 percent revenue premium
13 to account for what you're calling the "JetBlue Effect,"
14 correct?

15 A. The -- the modeling specifically was not to capture
16 the JetBlue Effect, it was to capture the product
17 premium between the two carriers. So the 1.24 was
18 calculated the way that we had discussed. It was not
19 revised thereafter.

20 Q. In fact you continued to use that 24 percent revenue
21 premium on as part of projecting revenues in the
22 combined network plan, correct?

23 A. That's correct.

24 Q. You also spoke with your counsel on Thursday about
25 what it means for an airline carrier to have increased

1 relevance. Do you recall that?

2 A. Yes.

3 Q. And you described the increased relevance as a
4 win-win for both JetBlue and customers, correct?

5 A. Yes.

6 Q. And the benefit for customers you mentioned that
7 they have an airline to be loyal to, do you recall that?

8 A. Yes.

9 Q. But for customers who don't want to be loyal to an
10 airline and just want the lower price, increased
11 relevance might not be a win for them, correct?

12 MR. MITCHELL: Objection, your Honor.

13 THE COURT: I'm going to sustain that. I mean
14 might not? It's argumentative, one, and I don't know if
15 it's specifically definitive enough for him to answer.

16 MR. MOORE: I'll move on, your Honor.

17 Q. One other question about the increased relevance you
18 calculated, Mr. Friedman.

19 You didn't calculate this increased relevance
20 would improve -- would be a benefit for all customers,
21 right?

22 A. In my view it would be a benefit to all customers.
23 Whether or not a customer wants to engage in that
24 benefit or realizes that benefit, um, is up to the
25 customer. But either a customer has more choice or a

1 customer has alternative options.

2 Q. Well during your testimony on Thursday you
3 identified higher and leisure customers as a category of
4 customers that might benefit, right?

5 A. One of many.

6 Q. And you identified corporate customers?

7 A. Yes.

8 Q. And customers who might want to participate in a
9 credit card program?

10 A. Yes.

11 Q. But for customers who don't want any of that, have
12 you actually shown that they want this increased
13 relevance?

14 MR. MITCHELL: Objection, your Honor.

15 THE COURT: No, that's different, as he
16 investigated it. I see. He's asking him.

17 A. Um, I think what we have found is that customers
18 enjoy having multiple routes, multiple destinations
19 afforded to them for travel purposes on a year after
20 year after year basis to go to different places, to be
21 able to go to different family events, to be able to go
22 on different business trips. I think across the
23 customer segment spectrum anyone would appreciate having
24 more destinations to fly to when they need to fly and
25 being able to fly those routes during the right time of

1 day.

2 Q. But did you investigate whether there would be a
3 benefit for a customer who only wants to fly once, as a
4 once-in-a-lifetime need to fly, and is just looking for
5 the lowest price?

6 A. I can only imagine that being able to fly to the
7 destination that that person wants to fly to would be a
8 benefit for that person.

9 Q. I'm referring to a different topic. I think you
10 mentioned on Thursday that you only spent 5 to 7
11 business days on the network overview that was created
12 for the revenue synergies modeling, is that right?

13 A. Um, yes.

14 Q. And you compared that to the months of work that you
15 spent on the Combined Network Plan, correct?

16 A. Yes.

17 Q. But last year was not the first time that you
18 modeled revenue synergies related to a potential
19 acquisition of Spirit, correct?

20 A. That's correct.

21 Q. You also modeled revenue synergies in 2018, correct?

22 A. Yeah, 2017 and 2018.

23 Q. And you also modeled revenue synergies in 2020,
24 correct?

25 A. Correct.

1 Q. And then you modeled them again in 2022, correct?

2 A. Correct.

3 Q. And that was the work that we were looking at on
4 Thursday, correct, the 2022 work?

5 A. Yes.

6 Q. So it's been at least 5 years now since you first
7 started modeling revenue synergies connected with the
8 potential acquisition of Spirit, correct?

9 A. We've been looking at the revenue synergies I think
10 three times or since 2017.

11 Q. Mr. Friedman, you also testified on Thursday that as
12 part of the process for creating the Combined Network
13 Plan, your team analyzed whether the company would be
14 able to achieve the highest profit amount,
15 profitability, correct?

16 A. We analyzed profitability as part of the combined
17 network plan.

18 Q. But this is not the first time your team has
19 analyzed the profitability of a Combined JetBlue, Spirit
20 network, correct?

21 A. Um, the combined network plan was the -- the first
22 time where we comprehensively, um, created a full
23 network through 2027 to evaluate what the profitability
24 would look like.

25 Q. However each of the times that you worked on revenue

1 synergies in the past, you also modeled profitability in
2 connection with the combined JetBlue and Spirit network,
3 correct?

4 A. We did modeling to calculate the revenue synergies.
5 The full profitability of the transaction and the end
6 state profitability was not modeled by my team.

7 Q. But as we discussed on Thursday, you were modeling
8 route by route, for example, in order to determine the
9 profitability of those routes, correct?

10 A. On those individual routes at the time that Spirit
11 was flying for the purposes of the revenue synergies, we
12 had a model that accounted for some of the revenue
13 synergies, which led to a partial margin forecast, which
14 we then, um, continued to use for revenue synergy
15 purposes. But that wasn't a full network profitability
16 model.

17 Q. Well each time you did modeling for revenue
18 synergies, 2018, 2020, and 2022, you modeled that
19 JetBlue has redeployed Spirit aircraft, and that would
20 lead to synergy problems, correct?

21 A. We modeled -- again for the purposes of the synergy
22 valuation back then, we modeled what would potentially
23 be redeployed. I think in some instances -- in many
24 instances we didn't actually caveat where those would
25 go, it would be based off an assumption of revenue

1 performance.

2 Q. But nevertheless all three times you modeled
3 redeployment, correct, off a portion of Spirit's
4 network?

5 MR. MITCHELL: Objection, your Honor.

6 THE COURT: No, overruled. You may have it.

7 A. Again we modeled a value associated with the
8 redeployment, um, but we did not specifically allocate
9 each shell, nor did we account for, um, the future --
10 the future fleet as a result.

11 Q. And then the merger agreement was signed in 2022,
12 right?

13 A. Um, yes.

14 Q. After you completed work on the deal modeling?

15 A. Yes.

16 Q. And then after the merger agreement was signed,
17 that's when you worked on the Combined Network Plan,
18 correct?

19 A. Yes.

20 Q. And that was the plan that was created while this
21 transaction was being investigated by the Department of
22 Justice, correct?

23 A. Um, I believe you were investigating at the time,
24 yes.

25 Q. And the Combined Network Plan, unlike all of these

1 other revenue synergies we've been talking about, you
2 did no redeployment of the Spirit aircraft to the
3 baseline sample, correct?

4 MR. MITCHELL: Your Honor, objection. I'm sorry
5 to interrupt, but we've covered those extensively.

6 THE COURT: I think we have, Mr. Moore.

7 MR. MOORE: Your Honor, may I be heard briefly?

8 THE COURT: Yes.

9 MR. MOORE: During counsel's friendly cross-
10 examination on Thursday, they tried to create the
11 impression that the Combined Network Plan was the more
12 reliable impression of, um, what the post-merger network
13 would look like. This simply goes to rebut that
14 impression and show that over time these were being done
15 and model redeployment has --

16 THE COURT: I think you've made that point. Move
17 on.

18 MR. MOORE: I'll move on, your Honor.

19 Q. Mr. Friedman, I want to switch topics again.

20 You also spoke with your counsel about how this
21 transaction might impact JetBlue's utilization of its
22 aircraft, correct?

23 A. Yes.

24 Q. In the deal modeling from 2022, you did not quantify
25 any utilization increases that were created as a result

1 of the transaction, correct?

2 A. That's correct.

3 Q. And as of your deposition in June of this year,
4 JetBlue still had not completed any analyses quantifying
5 utilization increases to your knowledge, correct?

6 A. That's correct.

7 Q. You also spoke with your counsel about some changes
8 that JetBlue has recently made to its network. Do you
9 recall that?

10 A. Yes.

11 Q. I want to talk about a couple of other changes that
12 JetBlue has made recently.

13 JetBlue's recently begun service on the route
14 between Orlando and Punta Cana, correct?

15 A. Yes.

16 Q. And are you aware that Spirit also offered service
17 on that route?

18 A. Yes.

19 Q. So this is a new route where JetBlue and Spirit now
20 compete against each other, correct?

21 A. And other airlines too.

22 Q. JetBlue has also recently begun service on the route
23 between Orlando and the Raleigh Durham Airport, correct?

24 A. Yes.

25 Q. Are you aware that Spirit also offers service on

1 that route?

2 A. Yes, amongst multiple other airlines.

3 Q. So again this is a new route where JetBlue and
4 Spirit now compete against each other, correct?

5 A. We competed against Spirit and multiple airlines on
6 this route.

7 Q. And then you also spoke with your counsel on
8 Thursday about the Combined Network Plan, do you recall
9 that?

10 A. Yes.

11 Q. And I think you told your counsel that JetBlue could
12 not achieve the growth in the Combined Network Plan on a
13 standalone basis, correct?

14 A. Correct.

15 Q. Do you know how many departures Spirit plans to
16 offer on a standalone basis in 2027?

17 A. Um, no.

18 Q. So if I were to ask you the number of departures
19 that JetBlue and Spirit together would offer in 2027,
20 you couldn't tell me that number?

21 A. Um, no.

22 Q. And you couldn't tell me the difference between that
23 number and the number you had reported in the Combined
24 Network Plan, correct?

25 A. I do not know Spirit's numbers, no.

1 Q. And you wouldn't know how many are attributable to
2 the increased departures you talked about in the
3 Combined Network Plan and specifically to the
4 transaction, correct?

5 A. Um, my understanding of what I was referring to is
6 not necessarily departure count, but just if you were to
7 think about the fleet as a whole, would JetBlue be able
8 to get to that size of a fleet, roughly 665 aircraft by
9 2027? Today we're at 280, um, just about. So to get
10 from 280 to almost 700 aircraft, that's what I was
11 referring to. But I don't know anything about Spirit's
12 individual plans.

13 Q. And that aircraft number, that's just adding the
14 JetBlue and Spirit airplanes, correct?

15 A. Um, yes, plus the order books.

16 MR. MOORE: I think, your Honor, I have no further
17 questions at this time. I pass the witness.

18 THE COURT: Any redirect?

19 MR. MITCHELL: Yes, very briefly, your Honor.

20 THE COURT: You may.

21

22 REDIRECT EXAMINATION BY MR. MITCHELL:

23 Q. Mr. Friedman, do you recall -- if you could turn to
24 the government's binder, there was a Demonstrative G
25 that Mr. Moore talked to you a little bit about on

1 Thursday. I know you have that in front of you.

2 A. (Turn.) I have a few binders.

3 Q. Oh, it's the, um, this is "Eric Friedman, JetBlue
4 Airways Corporation, confidential outside counsel, and
5 the Department of justice" --

6 THE COURT: Now where do you want him to look in
7 this binder?

8 MR. MITCHELL: Demonstrative G, like "green" is --

9 THE COURT: I have it, yes. Thank you.

10 Q. So just put that in front of you, Mr. Friedman.

11 A. On this? (Looks.) Yes.

12 Q. Okay. Do you recall talking to Mr. Moore about this
13 on Thursday?

14 A. Yes.

15 Q. Okay. Mr. Moore read into the record some of the
16 numbers that are on this slide here.

17 Do you know, one way or the other, whether any of
18 these numbers are correct?

19 A. I have not reviewed his numbers.

20 Q. Okay. So is that a "no," that you don't know what
21 --

22 A. Correct, I don't know.

23 Q. And here, um, the slide purports to, um, reflect
24 "Airport Pair Nonstop Overlap Routes." Do you see that
25 in the title?

1 A. Yes.

2 Q. Do you think, looking at the data limited to
3 nonstop -- sorry, "Airport Pair Nonstop Overlap Routes"
4 is the best way to think about who JetBlue competes
5 against in South Florida?

6 A. Absolutely not.

7 Q. Why not?

8 A. I think if you were to look at it from that
9 perspective, right, if we just take a route, for
10 example, Fort Lauderdale, JFK, um, would Miami, La
11 Guardia be captured in that comparison? And I think the
12 reality is that Miami La Guardia has an impact on JFK
13 Fort Lauderdale. I think there are a host of instances
14 that would probably fall into that category.

15 Q. Okay. And what is the legacy airline with a hub in
16 Miami?

17 A. That's American Airlines.

18 Q. And does American Airlines fly from Miami to places
19 that JetBlue flies from New York?

20 A. Yes, absolutely.

21 Q. So the way you understand this slide, the way it was
22 created where it says "Airport Pair," do you understand
23 that American flights out of Miami would be reflected in
24 this slide or would not be reflected in this slide?

25 A. I don't think they're properly reflected in this

1 slide.

2 Q. Thank you, Mr. Friedman. You can put that to the
3 side.

4 A. (Puts away.)

5 Q. Briefly if we turn to Exhibit 697, which is in the
6 other binder, it's the one without the Department of
7 Justice log. Yes. And it's in there as Demonstrative
8 -- sorry, Summary Exhibit F, I think it's now Exhibit
9 697 in the record.

10 A. (Turns.)

11 Q. Are you there?

12 A. Yes.

13 Q. Okay. So Mr. Moore asked you a number of questions
14 on this exhibit.

15 The events reflected here in Exhibit 697, these
16 events were from the competitive schedule change reports
17 that your team prepares and maintains in the ordinary
18 course of business?

19 A. Yes.

20 Q. Okay, and just remind us. What is the criteria for
21 a schedule change to make its way onto that?

22 A. Um, there are multiple criteria, but it's
23 essentially anything that we deem noteworthy and
24 important to communicate to, um, senior leadership of
25 the Network Planning Team and the senior leadership of

1 the company.

2 Q. So all of the events in 697 were noteworthy enough
3 to make them --

4 A. Yes.

5 Q. Thank you. Put that one to the side.

6 Mr. Moore asked you a few questions about the, um,
7 revenue synergy work you did in connection with the deal
8 modeling. Do you recall that?

9 A. Yes.

10 Q. And at one point I think the record might even imply
11 that you were working on the revenue synergies for five
12 years. Do you recall him talking to you about the
13 different iterations of the deal?

14 A. Yes.

15 Q. Okay. So did you work on the revenue synergies deal
16 modeling for five years?

17 A. Um, let me be clear about this. We worked on the
18 revenue synergies modeling for a short period of time in
19 2017, 2018, another spurt of time in 2019, and another
20 period of time in, um, 2022. I don't want it to appear
21 as if we were working on them continuously for five
22 years.

23 Q. Okay. You've already testified to the amount of
24 time you spent on this modeling in 2022. Approximately
25 how much time did you spend on this modeling in 2017 and

1 then again in 2019?

2 A. On the revenue synergies specifically?

3 Q. Correct.

4 A. Um, I would say we roughly spent two to three weeks,
5 um, on the actual modeling of the revenue synergies in
6 2017 and 2019.

7 Q. Okay. And that's in contrast to spending numerous
8 months on the Combined Network Plan?

9 A. On the Combined Network Plan, um, we spent
10 approximately 4, 4 1/2 months creating the Combined
11 Network Plan.

12 Q. Thank you, Mr. Friedman.

13 MR. MITCHELL: Your Honor, no more questions.

14 THE COURT: Nothing further for this witness?

15 MR. MOORE: Nothing further, your Honor.

16 THE COURT: You may step down.

17 Call your next witness.

18 MR. DUFFY: Yes, your Honor, plaintiffs will be
19 calling Barry Biffle, and we'll be getting him in just a
20 moment. He'll be here momentarily.

21 (Pause.)

22 THE COURT: While he's coming, I've been handed
23 that you agree to the admission of two additional
24 exhibits, and that of course is fine, but we haven't
25 mentioned it on the record. AEZ is admitted 698. AEK

1 is admitted 699.

2 (Exhibits 698 and 699, marked.)

3 THE COURT: And I guess everything, Exhibit 700
4 through 704. AC is admitted as Exhibit 700. And then,
5 um, you will adopt 701, 702, 703, and 704, as you agree.

6 (Exhibit 700, marked.)

7 Mr. Biffle, you may take the stand.

8 MR. DUFFY: And Mr. DiMarco will be taking this
9 witness, your Honor.

10 THE COURT: Of course.

11 MR. DIMARCO: Good morning, your Honor, John
12 DiMarco.

13 (BARRY BIFFLE, sworn.)

14 MR. DIMARCO: May I proceed, your Honor?

15 THE COURT: You may.

16

17 *****

18 BARRY BIFFLE

19 *****

20

21 DIRECT EXAMINATION BY MR. DiMARCO:

22 Q. Good morning, Mr. Biffle.

23 A. Good morning.

24 Q. You have a binder on your desk in front of you, but
25 you don't have to get it now. I'll direct you to it

1 when it's time.

2 A. All right.

3 Q. Would you please state your spell your full name for
4 the record.

5 A. Barry, B-A-R-R-Y. Biffle, B-I-F-F-L-E.

6 Q. Who is your current employer?

7 A. Frontier Group Holdings.

8 Q. And Frontier Group Holdings operates the airline
9 Frontier, correct?

10 A. That is correct.

11 Q. How long have you been with Frontier Group Holdings?

12 A. Since July of 2014.

13 Q. What positions have you had with Frontier Group
14 Holdings and for what time periods?

15 A. I was the President from July, um, '14 to March
16 of -- well actually I held the President title actually
17 until a month ago, and then I held the office of the CEO
18 from '15 to -- mid '15 to '16, and then the CEO from
19 March '16 until now.

20 Q. What other airline experience do you have?

21 A. I was the CEO of Viva Colombia in South America. I
22 was the Executive Vice-President of Spirit Airlines.
23 And then I held a lot of different roles. I ran
24 Consumer Marketing at U.S. Airways. And I worked at
25 Taymar American back in the '90s.

1 Q. When did you work at Frontier again? No, Spirit.
2 Spirit.

3 A. Oh, Spirit? From 2005 to 2013.

4 Q. All right. Where does Frontier fly?

5 A. Um, we fly, um, in and out of North America. Um,
6 mainly domestic.

7 Q. Do you fly anywhere else?

8 A. Yes, we fly to the Caribbean, um, Central America,
9 Mexico.

10 Q. Does Frontier's network contain bases?

11 A. Yes.

12 Q. Where does Frontier currently operate its bases?

13 A. We have bases in Phoenix, Las Vegas, Denver, Dallas
14 Fort Worth, Atlanta, Philadelphia, um, Miami, Orlando,
15 and Tampa.

16 THE COURT: When you use the word "base," what do
17 you mean?

18 THE WITNESS: I mean we base the aircraft, the
19 crew, and the maintenance, um, technicians, as well as
20 parts. So everything we need to operate the aircraft
21 are available at that location.

22 THE COURT: Thank you.

23 Q. What type of airline is Frontier?

24 A. We are a low-cost carrier generally referred to as
25 an ultra-low-cost carrier.

1 Q. What type of aircraft does Frontier fly?

2 A. We fly the Airbus 320 family.

3 Q. Are all of Frontier's aircraft the Airbus 320
4 family?

5 A. Yes.

6 Q. Does the fact that all of your aircraft are in the
7 A320 family from Airbus, um, make Frontier vulnerable to
8 delivery delays and defects from those aircraft?

9 A. If Airbus has a challenge it will impact us
10 generally, if it impacts the narrow-body 320 family
11 deliveries.

12 Q. What type of engines do those aircraft have?

13 A. So we have a couple different generations. So we
14 have the classic aircraft that have the CFM 56 powered
15 engine. We have the -- in the NEO, um, new engine
16 option, we have the CFM Leap as well as we just recently
17 started taking the Pratt-powered GTF.

18 Q. Um, and a similar question as before. The fact that
19 you have only two suppliers, the CFM and the Pratt &
20 Whitney, make Frontier delivery delays even more --

21 A. Yes.

22 Q. How many aircraft are in Frontier's fleet today?

23 A. Um, 130.

24 Q. How many available seat miles does Frontier fly in
25 2022?

1 A. I don't know the ASM count.

2 Q. Does around 30 billion sound close?

3 A. Yeah, that sounds accurate.

4 Q. How much revenue did Frontier make in 2022?

5 A. How much revenue? Um, close to 3 billion.

6 Q. Which domestic airlines does Frontier compete with?

7 A. Um, most all of them.

8 Q. What type of information does Frontier track about
9 its competitors?

10 A. All types of information. So we track their
11 capacity, we track their margins, we track their growth
12 rates, we track their -- all types of performance
13 metrics.

14 Q. What about their network genius?

15 A. We monitor that.

16 Q. What sources of information does Frontier use to
17 track its competitors?

18 A. Um, everything from public filings to, um,
19 government data.

20 Q. How much visibility does Frontier have with
21 competitors forward-looking network?

22 THE COURT: I don't understand the question. How
23 much visibility --

24 Q. Yeah, does it have access to its competitors' plans?

25 A. So we have the same access everyone has, which is to

1 look at forward schedules that people have filed. So
2 we're only, you know, at this point starting to see a
3 good picture for Q1. So it's generally within 6 months
4 can we see, you know, what people are doing.

5 Q. But you only have access to their publicly-filed
6 plans, right?

7 A. Oh, sure. Yeah.

8 Q. Frontier has agreed to buy certain assets from
9 JetBlue if this merger closes and proceeds, is that
10 correct?

11 A. That's correct.

12 Q. Mr. Biffle, I'd like to start our discussion today
13 with an overview of the benefits that ultra-low-cost
14 carriers bring to consumers.

15 What distinguishes an ultra-low-cost carrier
16 business model from leisure carriers?

17 A. I'm sorry, what distinguishes an ultra-low-cost
18 carrier?

19 Q. From a legacy carrier.

20 A. Well typically we would have the lowest cost, um --
21 well some may be considered ultra-low cost and not have
22 the lowest. We happen to have the lowest. But we tend
23 to have lower costs and they derive those costs
24 generally by high utilization, high-gauge aircraft with
25 high density of seats, and typically don't provide a lot

1 of, um, extra, you know, creature comforts, lounges, you
2 know first-class products, those type of things that add
3 to costs, and typically in order to lower the fares for
4 consumers to enable everyone to fly, they'll unbundle
5 much of their services so that they have ancillary
6 products and offerings so that they can make the base
7 fare as low as possible to enable more people to fly by
8 giving them that access.

9 Q. And is there any difference in the types of networks
10 that you operate and how you fly the aircraft?

11 A. Typically we are, I think -- in carriers that are
12 considered ultra-low cost carriers, if you go around the
13 world, I think the only thing they don't do is offer a
14 hub and spoke.

15 Q. And a similar question. What distinguishes an
16 ultra-low-cost carrier business model from carriers like
17 JetBlue and Southwest?

18 A. Costs alone are typically the biggest difference.
19 Those two carriers are much more mid cost.

20 Q. Would you consider Southwest a good replacement for
21 an ultra-low-cost carrier?

22 MS. BANSAL: Objection.

23 THE COURT: Yeah, I think that's vague, a "good
24 replacement."

25 MR. DIMARCO: Sure.

1 Q. Do you consider Southwest as, um, an airline that
2 offers a similar product to the ultra-low cost carrier?

3 A. Their product could be similar. Their price
4 generally not.

5 Q. Do you ever evaluate the effect of a ULCC's entrance
6 into a new route on the fares and the number of
7 passengers that fly that route?

8 A. We've done that multiple times, yes.

9 Q. Have you ever heard of an effect called "ULCC
10 effect"?

11 A. Yes.

12 Q. What happens to fares when a ULCC enters a route?

13 A. Typically fares drop 30 to 50 percent, and you'll
14 see a 40 to 50 percent jump in volume.

15 Q. Have you observed ULCC entry causing legacies to
16 lower their fares?

17 A. Yes.

18 Q. Have you observed ULCC entry causing nonlegacy
19 carriers to lower their fares?

20 A. Yes.

21 Q. Have you observed legacy carriers change their
22 product in response to ULCCs' growth in the marketplace?

23 A. Yes.

24 Q. How did they change their product?

25 A. They introduced a product called Basic Economy.

1 Q. Are you familiar with something called the "JetBlue
2 Effect"?

3 A. I've heard of it, yes.

4 Q. What's the "JetBlue Effect"?

5 A. Um, it's the same -- I'm sorry?

6 MS. BANSAL: Objection.

7 THE COURT: Overruled. He can tell us what he
8 thinks it is.

9 A. It's the same thing as the ultra-low-cost effect.
10 It's the same thing as any carrier filling the blank has
11 said about their effect. If you drop the prices, you
12 tend to stimulate demand.

13 Q. How does the ULCC effect you've described compare to
14 the JetBlue Effect?

15 A. It -- the JetBlue Effect is JetBlue -- if you look
16 at the data, JetBlue tends to not drop the fare as much
17 as carriers like ourselves, therefore you don't get
18 quite as much volume stimulation. But they do get
19 stimulation.

20 Q. Have you observed JetBlue lowering fares in response
21 to ULCC entering?

22 A. I've seen that, yes.

23 Q. I'd like to talk a little bit about the investments
24 that Frontier has made.

25 What types of investments has Frontier made

1 towards its own growth?

2 A. I'm sorry?

3 Q. Investments have you made towards your own growth?

4 A. Well we continue to acquire aircraft, um, parts, um,
5 we have pilots, flight attendants, mechanics, we're
6 making significant investments acquiring, you know,
7 hangars, real estate gates, all types of things to
8 invest in growth.

9 Q. How many aircraft does Frontier have on order that
10 are yet to be delivered?

11 A. Over 200.

12 Q. When did Frontier first place, um, the order for its
13 current order book?

14 A. We have several orders. Um, I believe we're done
15 with the original order that I inherited. The aircraft
16 we're delivering today came from an order in November of
17 2017 at the Dubai Air Show.

18 Q. And has Frontier amended that order since?

19 A. We have not amended that order, but we added more
20 two years ago.

21 Q. Um, and has Frontier started taking deliveries in
22 this order from the Dubai show?

23 A. Yes.

24 Q. (Pause.) Based on the last amendment you added to
25 your aircraft order, um, how many planes does Frontier

1 plan to take delivery of in 2024?

2 A. Around 20.

3 Q. And how about in 2025?

4 A. I believe it goes up slightly.

5 Q. But still within the 20?

6 A. Yeah, I mean we will grow to the mid teens, you know
7 15 percent range, for the next several years.

8 Q. And how about in 2026?

9 A. Very similar.

10 Q. Has Frontier run into any issues with Airbus
11 delivering planes in accordance with its orders?

12 A. Yes.

13 Q. What are the magnitude of the delivery delays?

14 A. This year is an example. We were supposed to get
15 over 30 aircraft and we're going to get about 20.

16 Q. How have the delivery issues you just described
17 impacted Frontier's ability to grow?

18 A. It's just made us smaller in the near term and it
19 caused a lot of complications and excess costs, because
20 we had hired pilots, flight attendants, and everything,
21 in advance and the aircraft didn't show up.

22 Q. Do you know how much your growth this year varied
23 from your plan?

24 A. Um, in the 10 percent range.

25 Q. Has Frontier taken any steps to mitigate the effects

1 of the aircraft delays?

2 A. Um, yes, although 10 percent is hard to mitigate. I
3 mean that's a large hit.

4 Q. What has Frontier been able to do to mitigate?

5 A. Well we slowed our hiring and training and, um,
6 that's the main thing we've been able to do.

7 Q. Can Frontier continue those mitigation efforts going
8 forward if the delays continue?

9 A. So the delays will continue, but the best way to
10 think about it is, um, at the beginning of the delays,
11 that's when all the pain has been taken. So most of
12 this is now behind us. What we're now getting into is
13 the cadence of everything being delayed. So even though
14 we'll have aircraft in 2024, as an example that will be
15 delayed until 2025, the ones that were delayed from 2023
16 will show up in '24. So the impact is more acute at the
17 beginning, if that makes sense.

18 Q. And do you have a sense of when, um, you'll
19 ultimately catch up to the network aircraft you're
20 expected to get?

21 A. Um, well there's what Airbus says, there's what some
22 of their suppliers say, and then there's the
23 marketplace. We'll see if -- we'll see if all these
24 aircraft deliveries that have slowed them up. But they
25 claim it's going to take several years.

1 Q. When you say "several years," is that in the order
2 of five years?

3 A. I think it's sooner than that. But 3 to 4.

4 Q. As a result of the delays, how many planes do you
5 expect to be backlogged in the next couple of years?

6 A. Somewhere in the 15 to 20 -- up to 25 backlogged,
7 depending upon the time period. But that backlog kind
8 of stays the same and it will slowly get better. So
9 we'll actually start at some point taking more planes
10 than we'd planned because they'll get back to their
11 normal amount.

12 Q. Um, have you -- has Frontier tried to increase its
13 utilization in response to the aircraft delays?

14 A. We are working to increase our utilization, but not
15 in response necessarily to the delays. We're just still
16 recovering from the pandemic.

17 Q. And where is Frontier, um -- I guess I'll start
18 here. Is there a limit to the amount in which you can
19 utilize an aircraft?

20 A. Um, yeah, in the past, prior to the pandemic, it was
21 probably in the mid to high 12 hours per day. We have
22 been challenged to get above 11 1/2 or 12 with our
23 current ATC environment. So it's "Air Traffic Control."

24 Q. And where is Frontier's utilization today?

25 A. So we're in the 11s. We plan to get back into the

1 12s by changing the way we operate in order to mitigate
2 the Air Traffic Control issues.

3 Q. Are you familiar with the recent issues facing
4 operators in the Pratt & Whitney turbo-gearred engines?

5 THE COURT: I'm sorry, ask that again?

6 MR. DIMARCO: Sure.

7 Q. Are you familiar with the recent issues facing
8 operators at Pratt & Whitney's turbo-gearred engine?

9 A. Yes.

10 Q. How has Frontier's performance been impacted with
11 that issue?

12 A. We have not been impacted.

13 Q. What do you expect will be the impact?

14 A. We understand that in the second half of 2024 we
15 will have some inspections that will begin, but we
16 expect it to be a minimal impact to the airline.

17 Q. Why haven't you been impacted yet?

18 A. Several reasons. One, we didn't start taking the
19 GTF until, um, about a year ago at the end of '22 --
20 yeah, the end of '22, and so we don't have -- two things
21 as part of that is that we have a later generation of
22 the gear-turbo plan and with a fresh engine you don't
23 need any of the inspections. So there are several
24 issues that we will never be impacted by because we have
25 the later generation and it will take a year and a half

1 before we can actually need to inspect them.

2 Q. What was Frontier's most recent quarterly
3 performance?

4 A. Um, the third quarter we posted a loss.

5 Q. What contributed to that loss?

6 A. Um, supply and demand.

7 Q. Um, was fuel also a contributor to the loss?

8 A. Fuel did contribute, yes. In the quarter, um, I
9 think we saw a couple points impact of fuel versus
10 possibly the previous quarter. But the biggest thing
11 that has happened is that we as an industry have
12 continued to increase capacity at a time when, you know,
13 student loans, um, auto delinquencies, and all these
14 things have kind of hit this fall, um, which have caused
15 demand to soften at a time when capacity continues to go
16 up, especially in the domestic U.S.

17 Q. Did you also run into some operational issues this
18 quarter?

19 A. We did. Air Traffic Control was a pretty big
20 challenge in the summer.

21 Q. How has the recently experienced operating in the
22 demand environment changed Frontier's strategy going
23 forward?

24 A. So we, um, today are roughly 50 percent out and
25 back, meaning from our bases, as we talked about

1 earlier, when the planes go out and return with the crew
2 home. 50 percent do not, they spend the night somewhere
3 else in our system on a multi day trip. And our plans
4 now are to move to as high above 90 percent and as close
5 to 100 percent out back as possible by, um, by mid -- by
6 mid 2024.

7 Q. And in addition to that, how has the recently
8 experienced -- I suppose this is just the demand
9 environment. How has the recently experienced demand
10 environment interacted the type of markets that Frontier
11 attempts to serve going forward?

12 A. So the demand and the supply, um, it's, um, we've
13 seen an elevated amount of supply in Orlando, Las Vegas,
14 and kind of Florida, more leisure markets, um, and it's
15 disproportionately saturated compared to places that
16 have not been served. If you compare that to 2019, we
17 have places where we're still not even recovered back to
18 2019 capacity levels. So it's heavily geared towards
19 domestic leisure markets. And so that has saturated
20 first Frontier's leverage to these places, some were
21 more impacted than others, and if you actually look at
22 the financial performance across all the carriers, how
23 much of that you have, meaning the heavy leisure
24 markets, versus how much you don't have, this pretty
25 much dictates what the margin performance is.

1 Q. Um, so are you -- does Frontier have a new strategy
2 going forward in terms of the types of markets that it
3 serves?

4 A. Well it's not sort of a new strategy, but we are
5 going to stop growing in places that are saturated, and
6 we're going to grow in places that are still underserved
7 or are still at 2019 levels of capacity or below.

8 Q. Does Frontier expect the current operating demand
9 conditions to change in the future?

10 A. When you say the "operating conditions"? Do you
11 mean Air Traffic Control or do you mean the demand, what
12 do you mean?

13 Q. Let me split the question. Does Frontier expect the
14 current demand conditions to change in the future?

15 A. I think the demand will probably remain robust, even
16 if we have a slow-down, I think you would have good
17 volume. But I think it's reaching a peak in many of
18 your large leisure markets. They're fully stimulated.

19 Q. Um, despite some of the challenges from this
20 quarter, is Frontier still committed to the ultra-low
21 cost carrier big and small?

22 A. Oh, absolutely.

23 Q. Do you expect that Frontier will get back to
24 profitability?

25 A. We believe so, yes.

1 Q. Now I'd like to talk a little bit about the
2 differences that exist between, um, two ultra-low cost
3 carriers, Frontier and Spirit.

4 Are you familiar with Spirit's network?

5 A. Somewhat.

6 Q. What is your understanding of Spirit's network?

7 A. They have, um -- they have large concentrations of
8 operations in Fort Lauderdale, Detroit, Atlantic City,
9 Orlando, um, Las Vegas.

10 Q. Um, do Spirit and Frontier differ in the mix of
11 cities that they serve in their network?

12 A. Yes, there are differences. Yes.

13 Q. How are they different?

14 A. Um, we have, um, based in Phoenix as an example. We
15 tend to be a Western brand, given our roots, and so I
16 think we tend to do very well in the Western U.S. But
17 we just have different bases. We have a base in
18 Philadelphia, we've done very well there. By contrast
19 they're doing very well in Atlantic City, right, and in
20 other places. So we don't have a universally-the-same
21 network.

22 Q. And I think you may have been talking about this
23 earlier. But are you familiar with the concept of
24 network modularity?

25 A. Yes.

1 THE COURT: What does that mean?

2 THE WITNESS: It's similar to the basing concept
3 of flying out and back. So meaning you can easily move
4 something because it's modular, right? So it's not
5 complex. I think it's easiest to explain that it's a --
6 an airplane that flies multi legs across the United
7 States, right, maybe flies 4 or 5 places, that's not
8 modular, that's leaving crew all along the way. Very
9 complex.

10 Q. Which domestic airlines operate a modular network?

11 A. Our best example is probably Allegiant. Um, I think
12 we are approaching, we'll be almost completely modular
13 by next summer.

14 Q. How does the modularity of Frontier's network
15 compare to Spirit's network?

16 A. I haven't looked at their latest, but I think we're
17 much more modular.

18 Q. I just want to circle back to the mix-of-cities
19 questions that you had before.

20 Is there a difference in the size of cities that
21 Spirit and Frontier serve?

22 A. Historically they have been more leveraged to the
23 larger markets and we've been a little more diversified.

24 Q. With respect to modularity, does that mean that
25 you'll be flying the aircraft in and out of the base in

1 the same day?

2 A. Preferably, yes.

3 Q. Does Frontier serve routes more or less frequently
4 than Spirit? On average.

5 A. On average, less.

6 Q. Do you know the magnitude of the difference?

7 A. Um, I don't know the magnitude. Maybe 30 percent
8 difference. It's close to our difference in size
9 overall.

10 Q. Does Frontier have more or less connecting flights
11 than Spirit in its network?

12 A. I believe less.

13 Q. Does Frontier provide service to Haiti?

14 A. No.

15 Q. Does it provide service to Honduras?

16 A. No.

17 Q. Does it provide service to Nicaragua?

18 A. No.

19 Q. Does it provide service to Aruba?

20 A. No.

21 Q. Does it provide service to Saint Martin?

22 A. Yes.

23 Q. Does it provide service to South America?

24 A. Um, today? No.

25 Q. Are you familiar with the size of Spirit's fleet?

1 A. Yes.

2 Q. How large is Spirit's fleet?

3 A. I think they're pushing around 200.

4 Q. How does that compare to the size of Frontier's
5 fleet?

6 A. Like 30 percent bigger, 30, 40.

7 Q. Are you familiar with the size of Spirit's order
8 book?

9 A. I haven't looked at it lately.

10 Q. Um, where would you look to if you wanted to look at
11 Spirit's order book?

12 A. It's in their -- it's in their filings. They would
13 have it.

14 Q. Okay. (Pause.) Would you look to their 10Q
15 filings?

16 A. Sure. I'm sure -- typically in everyone's public
17 filing they list their current fleet count and how many
18 they have coming. More of the challenges is that you
19 often look at the company's presentation because they'll
20 actually give you how many are coming out off-lease. So
21 we don't look as much at how many do you have on order,
22 but how many are you planning to have incrementally,
23 right? So if you add 20, but you return 10, then you
24 grow by 10. So just an order alone doesn't mean growth.

25 Q. Would it refresh your recollection to see a copy of

1 Spirit's most recent 10Q?

2 A. Yeah, if you have it, we can look at it. Sure.

3 MR. DIMARCO: I'm going to pass this copy up.

4 MS. BANSAL: Objection, your Honor, foundation and
5 relevance.

6 THE COURT: Well look at it and see if that
7 refreshes his recollection.

8 (Passes up.)

9 THE COURT: I mean one would think that the filing
10 makes the best evidence. But we'll see where we go with
11 it.

12 A. (Looks.)

13 Q. I could point you to a page, help you out. To Page
14 15.

15 THE COURT: 15?

16 A. (Turns.)

17 THE COURT: It's the ante ultimate paragraph
18 there.

19 A. Okay, yes, it says they have 101 aircraft coming.

20 Q. You can close that, Mr. Biffle.

21 Does that reflect your recollection as to how many
22 aircraft they have?

23 A. Yes, I thought it was about 100, but I didn't know
24 it was 101.

25 (Laughter.)

1 Q. So how does that compare to the size of Frontier's
2 order book?

3 A. It's about half the size.

4 Q. Um, how long would it take before Frontier has the
5 approximately 200 aircraft that Spirit does today?

6 MS. BANSAL: Objection, foundation.

7 THE COURT: I think I'm going to sustain that.
8 You have to add another phrase, upon its presently
9 developed plan?

10 MR. DIMARCO: Sure, your Honor.

11 Q. How long would it take Frontier -- before Frontier
12 has the approximately 200 aircraft that Spirit has today
13 based on its current plan?

14 A. Um, back to our earlier discussion about when the
15 aircraft will be delivered. Um, I suspect it would be
16 somewhere in the 3 to 4 year range, most likely closer
17 to 3.

18 Q. Does Frontier have a specific plan to grow to be
19 over, um, 330 aircraft that Spirit and Frontier have
20 combined today based on its current plan?

21 MS. BANSAL: Objection.

22 THE COURT: No, overruled. He may answer.

23 A. Do we have a specific plan?

24 Q. Yeah.

25 A. What would be entailed in a plan?

1 Q. Do you have from orders, um --

2 A. No. Above that, no.

3 Q. Okay, I'd like to talk a little bit about Frontier's
4 network planning.

5 At a very high level, what factors does Frontier
6 consider when entering a new route?

7 A. On a high-level we consider first what do we believe
8 that the demand would be? And you can derive this, um
9 -- if it's flown in the United States, there's plenty of
10 public data that actually gives you good insights. If
11 it's not flown, you can use proxies. But ultimately you
12 have to determine how many people do you think will fly
13 that route on an average day and what do you think
14 they're going to pay. That's Step 1.

15 The next step is how would you operate it? And
16 once you are satisfied that you would operate it safely
17 and efficiently, then you would calculate the costs and
18 you would come up with a projected route P & L, and that
19 would determine if you believe it meets your target
20 thresholds.

21 Q. Does Frontier also consider its -- a fit of the
22 routes in its --

23 A. The fit?

24 Q. Yeah, the operational fit of the route.

25 A. Yeah, so -- I said that, a moment ago, sorry, maybe

1 I went over it quickly. Can we safely and reliably
2 operate it? And does it -- in that category would be is
3 it a good operational fit? As we discussed, if it's
4 from a base, it will be much easier to serve and start
5 service versus if it's not from a base.

6 Q. Does Frontier consider whether it provides existing
7 service to an endpoint of routes when selecting routes?

8 A. Yeah, if we're already serving it. Yes.

9 Q. Does Frontier prefer routes where it has existing
10 service at both endpoints?

11 A. We prefer -- yes, it is more preferred. I mean we
12 will start new dots on the map, if you will, just
13 because we're constantly going to be investing and
14 making sure that we have new dots. But, yes, our
15 preference would be once we're in a station, to fly more
16 to that station.

17 Q. And how would you compare the level of efforts
18 adding a new dot on the map versus, um, just adding
19 service to where you have preexisting service?

20 A. Oh, we spend a lot more time focusing on places we
21 already fly.

22 Q. Um, how about scenarios where Frontier just doesn't
23 have service at either endpoint, do you consider those
24 routes?

25 A. We look at them. In fact every time we look at a

1 long-range planning session, we're always looking at
2 places. We're not necessarily in that new base yet, but
3 if we're in that base, you know what else can we do from
4 there? So we look at those.

5 Q. What's the timeframe for those different types of
6 routes that you consider them?

7 A. Um, 1 to 5 years.

8 Q. Do routes where you don't serve either endpoint
9 present any additional risk to Frontier?

10 A. Sure.

11 Q. What constraints exist on Frontier's ability to
12 enter new routes or expand on existing routes?

13 A. What constraints exist?

14 Q. Yeah.

15 A. Typically airport gates are typically the biggest
16 constraint.

17 Q. Can you describe Frontier's experience attempting to
18 acquire gates at constrained airports?

19 A. Um, it's not pleasant.

20 Q. Where has Frontier experienced gate constraints?

21 A. Atlanta. Um, and Dallas Fort Worth. Um, most of
22 your major airports in the country have experienced some
23 challenges.

24 Q. Are you familiar with the term "Fortress Hub"?

25 A. Yes.

1 Q. What's a "Fortress Hub"?

2 A. It's where a dominant carrier typically has over
3 half the gates and capacity at an airport and they
4 typically work, um, feverishly with the airport
5 authority to slow down, thwart, and knock down
6 competition.

7 Q. Have you encountered difficulties obtaining gates at
8 Fortress Hubs?

9 A. Absolutely.

10 Q. Does Frontier consider the presence of the Big 4
11 airlines on routes when deciding to enter a route?

12 A. Sure.

13 Q. How does the presence -- how does the presence of
14 one of the Big 4 airlines affect Frontier's decision to
15 enter?

16 A. Well typically they are where the highest fares are,
17 so we're generally attracted to them.

18 Q. (Pause.) Does the presence of the Big 4 route have
19 any impact on the amount of frequencies that Frontier
20 might put on a route?

21 A. Yeah, absolutely.

22 Q. What is that impact?

23 A. So we've learned that, um, you know the Big 4 are
24 always trying to push us around, so we've learned not to
25 overexpose ourselves. So we try to conduct asymmetric

1 warfare and ensure that we don't have too much capacity
2 relative to their capacity. So if they decide to match
3 us, it will cost them more than it would cost me, on a
4 relative basis.

5 Q. Since you've been with Frontier, what percentage of
6 routes did Frontier enter and then later exit?

7 A. I don't know the number off the top of my head.

8 Q. Um --

9 A. Hundreds. We've started hundreds, I'm sure.

10 Q. Just as a percentage?

11 A. As a percentage?

12 Q. Yeah.

13 A. Well when I came to the company we --

14 MS. BANSAL: Objection.

15 A. We --

16 THE COURT: Yes?

17 A. We principally only flew to Denver, so I would
18 assume we had, I don't know, a hundred or less routes.
19 We now fly over 300. So we have grown 300 percent.

20 Q. And in that time of growth of 300 percent, do you
21 know how many just didn't work out, approximately?

22 A. Probably half.

23 Q. Have there been instances where Frontier exits an
24 entire airport?

25 A. Sure.

1 Q. Is Newark an example of that?

2 A. Yes.

3 Q. What happened at Newark?

4 A. We had the ability to fly in the morning and in the
5 evening, but we didn't have slots during the day, and so
6 with their operational problems without a full slate of
7 time slots, it became operationally extremely
8 challenging.

9 Q. Um, is Los Angeles International Airport another
10 instance where Frontier exited?

11 A. Yes, we did.

12 Q. I'd like to return back to our discussion of the
13 divestitures which you just talked on very briefly at
14 the beginning.

15 What has Frontier agreed to purchase from JetBlue
16 as the merger goes through?

17 A. Um, these slots that Spirit uses at La Guardia as
18 well as their terminal.

19 Q. Has Frontier agreed to purchase any engines from
20 JetBlue?

21 A. No.

22 Q. Has Frontier agreed to purchase any planes from
23 JetBlue?

24 A. No.

25 Q. Has Frontier agreed to hire any pilots from JetBlue?

1 A. No.

2 Q. What approvals are required for Frontier to take
3 control of Spirit's slots and gates at the --

4 A. I'm sorry, what approvals?

5 Q. Approval.

6 A. We would need the Port Authority approval. DOT
7 would have to transfer the slots.

8 Q. Um, do you know if the divestiture sale of the
9 assets, the Spirit's assets at La Guardia, is contingent
10 on the merger itself proceeding?

11 A. Yes, I mean JetBlue would have to buy them and
12 acquire them through a merger in order to sell them.

13 Q. Sir, going back to the approval.

14 Has Frontier made any contact to, um, BOP and NFA
15 for their approval of the transfer of the slots?

16 A. No.

17 Q. Has Frontier made any contact with the Port
18 Authority for their approval of the transfer of the
19 lease?

20 A. No.

21 Q. What agreement has Frontier entered into with
22 JetBlue regarding how it would use the routes?

23 A. Um, I don't think we agreed how we would use the
24 routes with JetBlue.

25 Q. Does Frontier have any concrete plans to replace all

1 of Spirit's routes out of La Guardia if the JetBlue,
2 Spirit deal goes through?

3 A. We have no firm plans yet.

4 Q. What route planning has Frontier done for the La
5 Guardia assets?

6 A. Um, we did a -- we did an analysis to confirm what
7 we believed we could fly there as a -- as a kind of a
8 consideration set to ensure that we felt comfortable
9 with what we would potentially bid for the slots.

10 Q. Um, does Frontier have any plans to replace Spirit
11 on its non La Guardia routes if the JetBlue, Spirit deal
12 goes through?

13 A. Well when you say "plans," do you mean specific
14 laid-out plans or in concepts that we talk about what
15 we'll do if this goes through?

16 Q. Specific laid-out plans.

17 A. We don't have any specific route plans, no.

18 Q. Just circling back to the discussion of route
19 planning. Just to confirm.

20 Was your route planning done specifically for the
21 purpose of valuing the La Guardia assets?

22 A. Yes.

23 Q. Does Frontier have enough planes to replace Spirit
24 on all of its routes and keep flying its existing
25 schedule?

1 A. No.

2 Q. Does Frontier have enough engines to replace Spirit
3 on all of its routes and keep flying its current
4 schedule?

5 A. No.

6 Q. Does Frontier have enough pilots to replace Spirit
7 on all of its routes and keep flying its current
8 schedule?

9 A. No.

10 Q. How many years would it take Frontier to get enough
11 planes, engines, and pilots, to replace Spirit on all of
12 its routes and keep flying its current schedule?

13 A. You want every route, every seat replaced. It would
14 take, um, 7 years. 8 years. I mean it's hard to answer
15 that question though. If they didn't exist, I guess I
16 could actually probably get the planes faster and
17 probably do it much faster. I'd have to look on a
18 plane. But, yeah, you could do it inside of 5 years, I
19 guess. If it didn't exist and we had the appetite, we
20 could grow 30, 40 percent, sure, we could do it much
21 faster.

22 Q. Does that estimate you just described --

23 A. That was with my current growth, the first estimate.
24 But if it actually happened and you wanted to develop a
25 business plan, you would grow much faster, if that makes

1 sense. Right? You would acquire more aircraft.

2 Q. Does that estimate also consider, you know,
3 Frontier's current own standalone plan?

4 A. No, I -- we have our own standalone plan, no, it
5 does not contemplate that. If -- but these things don't
6 happen in a vacuum, right? So every time that you
7 change a variable, it changes what you would consider.
8 Right? It's the same dialogue we had this morning, why
9 we don't have firm plans for La Guardia slots, because I
10 have no idea when I would get the slots. And so I would
11 look at it contemporaneously at that moment and what the
12 market opportunity looks like at that time. Right?

13 So the same thing here. You would do it for the
14 best and highest use, right? I mean the airline market
15 is very efficient. We would go after the highest fares,
16 the highest-priced options. So you wouldn't
17 necessarily -- I wouldn't go on a quest to replace every
18 Spirit if I thought I was going to lose money somewhere.
19 If that makes sense.

20 Q. Does the estimate that you gave include, um, a
21 growth that Spirit could have done with the 101 aircraft
22 that it had on order?

23 A. Um, no.

24 MS. BANSAL: Objection.

25 THE COURT: In view of the answer, do you press

1 the objection? He said "No."

2 MS. BANSAL: Yes, your Honor, we think the
3 question is speculative.

4 THE COURT: Well that's a "no" answer. Sustained.

5 Q. But if those aircraft --

6 THE COURT: Well she's pressing her objection and,
7 you know, it may be speculative. So we'll just leave
8 it.

9 Go ahead.

10 MR. DIMARCO: Yes, your Honor.

11 Q. In 2022, around the time JetBlue announced its
12 original offer, did you become familiar with JetBlue's
13 statement to the public about its plans for Spirit?

14 A. Yes.

15 Q. What do you recall about these statements?

16 MS. BANSAL: Objection, hearsay.

17 THE COURT: Sustained. I mean what difference
18 does it make what he recalls about those statements?

19 MR. DIMARCO: Your Honor, he was a market
20 participant at the time and he was -- I'm looking to,
21 um, understand his estimates as to what --

22 THE COURT: Fine. Fine. Why is it relevant in
23 this case?

24 MR. DIMARCO: Um -- I'll skip to my next question.

25 THE COURT: All right.

1 Q. Did Frontier reach conclusions about the effect that
2 JetBlue's plans would have had on prices to consumers to
3 pay?

4 A. Yes.

5 Q. What were those conclusions?

6 A. We concluded based on the announcement that they
7 made, um, the morning of their offer, that if -- they
8 said that their product would be the same as JetBlue,
9 they said they would remove the seats, and that their
10 margins would actually go up. So if you conduct
11 algebra, if the margins are going to go up, they remove
12 the seats, and the cost is going to be the same as
13 JetBlue's, then you're only solving for X and the only
14 thing that's left is the fares. So the fares would have
15 to go up.

16 Q. Has Frontier ever quantified the size of the price
17 increase?

18 A. I believe we quantified it at like 40 percent.

19 Q. What did Frontier communicate -- who did Frontier
20 communicate its conclusions about these fare increases
21 to?

22 A. I believe anyone that would listen. (Laughter.)

23 Q. Does that include your investors?

24 A. Yes.

25 Q. Did you issue a press release?

1 A. I believe so.

2 Q. To what extent is Frontier truthful and complete in
3 communicating with its investors?

4 A. I believe 100 percent.

5 Q. (Pause.) And in connection with those
6 communications, did Frontier make any statement to its
7 investors that entry by other ULCCs would mitigate the
8 price increases that would be realized as a result of
9 this JetBlue, Spirit merger?

10 A. I'm sorry, the question is what?

11 THE COURT: Yeah, if there was such
12 communications, the communications are the best
13 evidence. There's an objection.

14 MR. DIMARCO: Sure, your Honor.

15 Q. Mr. Biffle, would you turn to Exhibit TG in your
16 book.

17 A. (Turns.) I'm sorry, you said "TG"?

18 Q. Yeah.

19 A. (Turns.) Okay.

20 Q. Are you familiar with the Exhibit TG, Mr. Biffle?

21 A. Yes.

22 Q. And what is Exhibit TG?

23 A. It is a, um, press release that we put out.

24 Q. Is it within the ordinary scope of Frontier's
25 business to prepare press releases?

1 A. Um, no, I don't normally prepare press releases.

2 Q. Is it within the ordinary scope of Frontier's
3 business though, like Frontier itself to issue press
4 releases?

5 A. Oh, sure.

6 Q. Was this press release made by someone at Frontier
7 with knowledge of the opinions that it describes?

8 A. Yes.

9 Q. And was the record made at or around the time that
10 those opinions were held?

11 A. Yes.

12 Q. Is this record kept, um, in the ordinary course of
13 your business?

14 A. I'm sorry, the record of what?

15 Q. Do you retain this record in the ordinary course of
16 your business, do you retain your press releases?

17 A. Yes.

18 MR. DIMARCO: Your Honor, I request to have the
19 exhibit marked for identification as TG moved in
20 evidence as Exhibit 705.

21 MS. BANSAL: We object, your Honor.

22 THE COURT: And what's the ground?

23 MS. BANSAL: It's hearsay. It is 701. It is a
24 legal conclusion.

25 THE COURT: Well it is hearsay. I don't know as

1 it's a legal conclusion. I thought those were for me.
2 (Laughter.) It's a prediction, I suppose. And -- but
3 that goes more to its weight than to its admissibility.
4 We're going to admit what they said to the public in the
5 course of their business recognizing that it is a very
6 competitive business. This will be 70-what?

7 MR. DIMARCO: 705.

8 THE COURT: 705 in evidence.

9 (Exhibit 705, marked.)

10 MR. DIMARCO: No further questions, your Honor. I
11 pass the witness.

12 THE COURT: Counsel, do you wish to examine?

13 MS. BANSAL: I do, your Honor.

14 THE COURT: You may.

15

16 CROSS-EXAMINATION BY MS. BANSAL:

17 Q. Good morning, Mr. Biffle. Frontier is a
18 quickly-growing ULCC, correct?

19 A. Quickly growing? I guess we're growing. Yes.

20 Q. And part of Frontier's business model is to
21 constantly monitor opportunities for entry and growth,
22 correct?

23 A. Sure.

24 Q. And in doing so I believe you testified you'll often
25 look at routes in which other airlines have dropped

1 capacity, correct?

2 A. Absolutely.

3 Q. And that includes routes in which Spirit has dropped
4 capacity?

5 A. Yes.

6 Q. And when looking for opportunities, you'll also look
7 at routes in which fares have increased, correct?

8 A. Yes.

9 Q. And I believe you testified earlier, you have a
10 number of airplanes coming on-line in the next couple of
11 years, correct?

12 A. Yes.

13 Q. And you are a divestiture buyer in this merger,
14 correct?

15 A. Yes.

16 Q. And you will be receiving assets at La Guardia
17 Airport, correct?

18 A. Yes.

19 Q. And you agree, Mr. Biffle, that those assets will
20 allow you to compete more aggressively out of La
21 Guardia?

22 A. Absolutely.

23 Q. And that's currently a constrained airport, correct?

24 A. Yes.

25 Q. And so this will give you flexibility and growth

1 that Frontier does not currently have, correct?

2 A. Yes.

3 Q. Now Frontier has grown over the past 5 years, right?

4 A. Yes.

5 Q. Can you just describe for the Court briefly a little
6 bit about that growth?

7 A. In the last five years we've more than doubled the
8 size of the airline. We've opened new bases in Phoenix,
9 in Tampa, in Miami, Atlanta, Dallas. And we continue to
10 set up the -- the kind of infrastructure to support
11 that.

12 Q. So just to make sure that I understood you
13 correctly, you have doubled in size in the past five
14 years?

15 A. More than doubled.

16 Q. More than doubled in size.

17 A. Yes.

18 Q. Now I'd like to show what is labeled "Biffle
19 Demonstrative 2," and I believe that's in your binder
20 but it's also on the screen in front of you.

21 A. Okay.

22 Q. Now this Demonstrative was compiled using DB 1B data
23 from 2023 and it depicts Frontier's route map?

24 A. Yes.

25 Q. And these orange dots here, those are Frontier's

1 bases, and we've added a dot at Cleveland.

2 A. Yes, but that's not operational yet.

3 Q. But you have announced that you will be opening a
4 base in Cleveland?

5 A. I announced that last week, yes.

6 Q. So before we turn to the details of the map, just
7 for the benefit of the Court, how many airports does
8 Frontier currently operate in?

9 A. Right around 100.

10 Q. And roughly how many of those airports are domestic?

11 A. 85 percent.

12 Q. And the remaining 15 or so would be international?

13 A. Sure.

14 Q. And how many routes does Frontier fly?

15 A. I think this winter, high 300s by March.

16 Q. And how many passengers does Frontier serve a year?

17 A. 35 million. I mean it depends on which 12-month
18 period. But 35 million.

19 Q. Is it true that as of today Frontier serves, within
20 90 minutes of driving, 90 percent of the U.S.
21 population?

22 A. That's correct.

23 Q. So a consumer in the United States looking for a low
24 unbundled fare is at most 90 minutes from any airport
25 that Frontier serves?

1 THE COURT: Well I couldn't drive from Northern
2 Washington State to what appears to be a base here in
3 Colorado in 90 minutes. What am I missing?

4 THE WITNESS: So it's 90 percent of the
5 population. So 90 percent of the population is within
6 90 minutes. So this is just more of a testament. When
7 you look at that North Western part of the United
8 States, it's not as populated.

9 THE COURT: Thank you. I appreciate the
10 correction. That's why I asked.

11 And the same is true for those folks up there in
12 Northern Maine.

13 (Laughter.)

14 THE WITNESS: It's a little tougher up there.

15 THE COURT: Well it's a little less populated. I
16 understand.

17 Go ahead, Ms. Bansal.

18 Q. So going back to the orange dots, your bases, I
19 believe you testified your base is in Denver, Las Vegas,
20 Phoenix, Dallas, Atlanta, Philadelphia, Orlando, Miami,
21 and Tampa, correct?

22 A. Yes.

23 Q. And then the new one is Cleveland?

24 A. The new one coming in Cleveland.

25 Q. And just to emphasize your testimony from earlier,

1 those bases include aircraft, crew, maintenance, parts,
2 hangars, everything you need to operate, is that
3 correct?

4 A. That's correct. Yeah.

5 Q. Okay, we can take the demonstrative down.

6 Now Frontier's business model entails entering a
7 lot of routes, right?

8 A. We've entered a lot of routes and we're not afraid
9 to start it. We're also not afraid to remove it if it
10 doesn't work.

11 Q. And based on your experience in the industry, is it
12 your opinion that Frontier enters more routes than other
13 airlines?

14 A. Well by the fact that we're growing, we're always
15 going to be entering more routes.

16 Q. And as a function of that, if you're entering more
17 routes, you have more experience entering routes,
18 correct?

19 A. Absolutely.

20 Q. And why does Frontier enter so many routes?

21 A. I believe it's a function of our growth rate, but
22 also the environment in the United States, because we
23 talked about this earlier, we have to keep an asymmetric
24 kind of ratio versus the Big 4. So it forces us into a
25 lot more markets. At the same time though, this helps

1 more consumers because we find that we end up in more
2 places, um, maybe not from Northern Maine, but we end up
3 in more places for most people.

4 Q. So you're directing your services to where there's
5 unmet need, correct?

6 A. Correct, probably the greatest good. Yes.

7 Q. And you testified that once Frontier enters a route,
8 average fares on that route will often decline, reduce,
9 correct?

10 A. I'm not aware where it didn't happen.

11 Q. So in every one of your observations, that is the
12 case?

13 A. We drop fares, yes.

14 Q. And does Frontier have to fly with a certain
15 frequency to cause that fare reduction?

16 A. I mean if we serve as little as one a week, we will
17 drop the fare.

18 Q. So it's Frontier's presence alone that causes the
19 reduction in price, is that right?

20 A. Absolutely.

21 Q. And Frontier does fly a number of routes daily,
22 right?

23 A. Yes.

24 Q. In fact what is Frontier's average frequency
25 nationally?

1 A. We are roughly daily now.

2 Q. And you said, um -- so that means there's some
3 routes in which you fly a little more, some routes in
4 which you fly a little less?

5 A. That's right.

6 Q. And you think that that's proportional to -- sorry,
7 I'll strike that.

8 Now when Frontier decides to enter a market, it
9 does its diligence and homework on to whether to enter
10 that route, correct?

11 A. Yes.

12 Q. It puts a lot of time and effort into figuring out
13 if that's going to be a profitable route?

14 A. Yes.

15 Q. And when you get there, you similarly spend a lot of
16 time and energy trying to make it work?

17 A. Yes.

18 Q. You certainly don't enter with a plan to exit,
19 correct?

20 A. No.

21 Q. Ultimately your goal is to make a certain percentage
22 of margin, right?

23 A. That's right.

24 Q. Is Frontier willing to take short-term losses on a
25 route if it projects long-term profitability?

1 A. Yes.

2 Q. Now a route starts to underperform below that margin
3 goal, are there certain actions Frontier can take before
4 it exits?

5 A. Sure, we can reduce frequency, we can look at the
6 time of day, we can look at connections, we can take a
7 variety of mitigating steps.

8 Q. And so Frontier often takes those mitigating steps
9 before exiting?

10 A. Sure.

11 Q. But sometimes the route underperforms and you're
12 forced to exit, correct?

13 A. Oh, yes.

14 Q. But all airlines exit, that's part of the dynamic
15 nature of the industry?

16 A. We're portable assets, so we can move in easily and
17 move out easily.

18 Q. And when you say "portable assets," what do you mean
19 by that?

20 A. I mean it's not like a hotel. If you build a hotel
21 and it doesn't work well, you're stuck. (Laughter.)

22 Q. So you can move them?

23 A. We can move it.

24 Q. If a route is underperforming, what do you do with
25 the assets if you're forced to exit?

1 A. You move to somewhere you think is going to do
2 better.

3 Q. So fair to say you'll redeploy the planes to a more
4 profitable route?

5 A. Correct.

6 Q. Do you know how many routes Frontier overlaps with
7 Spirit on?

8 THE COURT: Today?

9 MS. BANSAL: Sorry?

10 THE COURT: Today?

11 Q. Yes, today.

12 A. This very second, no, but it's in the 150 range.

13 Q. Do you know that on a percentage basis?

14 A. It's around a third or so.

15 Q. Okay. And do you know that overlap on an available
16 seat-mile basis?

17 A. Um, no. I mean it's around a third. Somewhere in
18 that area code.

19 Q. So maybe a third overall and then for the available
20 seat mile basis, you don't know?

21 A. I would assume it would be very similar.

22 Q. And have you seen that overlap increasing over the
23 past few years?

24 A. Yes.

25 Q. On several routes on which you overlap with Spirit,

1 Frontier actually flies at a higher frequency than
2 Spirit, correct?

3 A. Maybe.

4 Q. Do you believe that to be the case?

5 A. Could be. I don't know. I can think of one, yes.

6 Q. How does Frontier decide if a route is a good entry
7 opportunity?

8 A. If we believe we can, um, profitably deploy the
9 asset over a sustained period of time, then we would
10 rank it against other opportunities before you make a
11 decision, and you would deploy the asset when you
12 believed it was the best of those current options.

13 Q. And you testified right when we started that
14 Frontier is often monitoring where Spirit may change its
15 capacity on a route, correct?

16 A. Yes.

17 Q. Including if they completely pull out of the route?

18 A. Yes.

19 Q. Are you aware if Spirit has been pulling out of a
20 number of routes lately?

21 A. I saw a list recently.

22 Q. And do you remember what was on that list?

23 A. Not all of them. But I remember some, yes.

24 Q. But you have made the observation that Spirit is
25 pulling out of a number of routes recently, correct?

1 A. Yes.

2 Q. For example, did Frontier at some point become aware
3 of Spirit's announcement that it was exiting routes
4 between Orlando and Ponce?

5 A. Yes.

6 Q. And that it was pulling out of routes from Orlando
7 to Aquadilla?

8 A. Yes.

9 Q. And those are routes that Frontier flies?

10 A. Yes.

11 Q. And after Spirit's announcement that it was exiting,
12 did Frontier expand its service on those routes?

13 A. Yes.

14 Q. Is this an example of Frontier taking advantage of
15 Spirit's dropping capacity?

16 A. Yes.

17 Q. Now I think you mentioned earlier that Frontier also
18 monitors the legacies, right?

19 A. Yes.

20 Q. And I believe you mentioned that's because the
21 legacies compete with Frontier through their Basic
22 Economy offering, do I have that right?

23 A. Yes.

24 Q. Now after this merger, if a Spirit -- if Spirit
25 leaves a route, is that an opportunity for Frontier?

1 A. It could be.

2 Q. And why could it be?

3 A. Because Spirit has established the route, they've
4 stimulated the market, um -- I think probably the best
5 example, all right, and I doubt they would pull this,
6 but let's just say Atlantic City to Myrtle Beach.

7 Right? They're the only one that flies that route. Had
8 they never flown it, I don't know if the average airline
9 would ever think to fly from Atlantic City to Myrtle
10 Beach. But they have built that market over a period of
11 decades. And if they were to pull it back, I probably
12 would be the first one to say "load it."

13 Q. So is it fair to say that Spirit creates proven
14 routes?

15 A. Yeah, they've proven the demand. So the best way to
16 explain this is if we go back to the questions earlier
17 about what was the criteria for deciding to fly a route?
18 You're making a guess at your demand and you're making a
19 guess at your costs. But you don't have to guess. If
20 Spirit were to pull out, we don't have to guess at the
21 demand. So this would make this the easiest thing to go
22 do. I mean -- and we wouldn't be alone, right? The
23 airline market is extremely efficient. I mean we would
24 be chasing it, Avelo would be chasing it, I mean the
25 scavengers would, you know, clean up this carcass within

1 weeks.

2 Q. So your testimony is that Frontier and other ULCCs
3 would chase the opportunities and quickly come in,
4 correct?

5 A. Yeah, I think the best example, and we saw this in
6 Mexico about 10 or 12 years ago. When Mexicana failed,
7 I mean Villares, Interjet, Viva, I mean they just
8 swarmed the opportunity. I mean within a year, a year
9 and a half, like everything in the world was replaced.
10 In fact it may have even been higher because they
11 brought in planes from other parts of the world, right?

12 Q. And so speed matters, is that fair?

13 A. Yeah, I mean that's what I say, there would be a
14 frenzy, because, yes, you'll want those. If they truly
15 leave, yeah.

16 Q. And those are opportunities that would go to the top
17 of Frontier's list, is that correct?

18 A. Potentially. So with the caveat "Can I serve it
19 from my base?" Right? So -- but most of the domestic
20 you'd be able to do pretty quick. And -- I have to
21 think about the international. But, yes, we're in bases
22 that could enable the international.

23 Q. And I believe you testified that if Spirit pulls
24 out, it reduces the risk for another ULCC like Frontier,
25 is that fair?

1 A. Well, yeah, so that's the second part, right, of the
2 demand in the supply, right? You now have a proven
3 demand profile and actually less competition. So, yeah,
4 that would attract ourselves and others.

5 Q. And would that lower the risk, um, enable Frontier
6 to perhaps enter routes in which don't fly out of your
7 bases?

8 A. Yeah, I mean it would lower it. But it would come
9 down to too like how fast -- we're dealing with this in
10 the United States right now, right? After the pandemic
11 people moved too much capacity and we have complete
12 lumpiness, which is causing differences in margins, you
13 have way too much capacity in Orlando and Vegas and not
14 enough in Minneapolis and LA. Right? But these things
15 work themselves out. So I suspect by this time next
16 year these things will completely flatten and things
17 reverse. The airline marketplace is extremely efficient
18 in that way.

19 I would only say that if we don't fly that to
20 either city as an example, um, someone else might do it
21 much faster than we could get there. So I don't know
22 that we would be the first one to get there, if we
23 couldn't fly that today from a base.

24 THE COURT: And these considerations that you're
25 testifying about now, they bear on the desirability and

1 in fact you've entered into a contract to take those
2 slots at La Guardia and to take the marine terminal
3 presently being formed by Spirit, is that right?

4 THE WITNESS: Yes, so I would have to, um, at
5 least call 5 airplanes, but it would take around 4 to 6
6 planes to replace the La Guardia flying. So I would
7 actually be, I guess, disadvantaged of 4 or 5 out of the
8 gate. But you would think that La Guardia would be
9 great ones to get. So if Allegiant gets to something
10 before I could get to it, because I was held up at La
11 Guardia, also so be it. Right?

12 THE COURT: But as I've listened to your
13 testimony, as we sit here today, real-world, while
14 that's a desirable -- from your point of view a
15 desirable divestiture by JetBlue, which you'll pay money
16 for or you're prepared to pay money for, at least at
17 present you haven't got the planes on your route -- you
18 can redeploy them to La Guardia, but you can't keep
19 flying your routes at 100 percent the way you're flying
20 them now, is that right?

21 THE WITNESS: Um, because of our growth -- so we
22 would have 20 airplanes coming next year and because of
23 the way we did the agreement, I have 6 months from
24 closing. So depending upon the outcome of this trial
25 and so forth, and there would be some period, I would

1 have up to 8 months. So I would have 15 airplanes
2 delivered --

3 THE COURT: 8 months to what?

4 THE WITNESS: To when I have to take over the
5 slots.

6 THE COURT: Right. Got it.

7 THE WITNESS: So I would have like 50 airplanes,
8 brand new airplanes delivered at the time. So I don't
9 have to pull from existing flying to do that.

10 THE COURT: All right.

11 THE WITNESS: And I think I would argue if you --
12 real-world today, if you look at the domestic
13 marketplace, there's probably not a better time -- and
14 I'm speaking for the industry, not just myself. Because
15 of the losses across the domestic marketplace among most
16 carriers, they're flying domestic, there's plenty of
17 loss-making routes and capacity that can be redeployed
18 pretty quickly.

19 THE COURT: Thank you.

20 Ms. Bansal, go ahead.

21 Q. And so I believe that you're saying -- if I
22 understand your testimony correct, if Frontier doesn't
23 get there first, there are a number of other ULCCs that
24 might get there?

25 MR. DIMARCO: Objection, foundation.

1 THE COURT: Overruled.

2 A. I would expect there are other airlines with profit
3 motivations that have either underperforming capacity or
4 new deliveries that they could easily put into those
5 places.

6 Q. If the merger goes through, would Frontier be
7 interested in exploiting other opportunities in Puerto
8 Rico?

9 A. Um, other than what we're already doing? I mean
10 --

11 Q. If Spirit were to further lower capacity in let's
12 say the Caribbean generally, would Frontier be
13 interested in exploring those opportunities?

14 A. Oh, sure.

15 Q. And is that true in Latin America as well?

16 A. Absolutely.

17 Q. And that's because those are natural extensions of
18 Frontier's leisure definition also, correct?

19 A. Leisure and VFR aspirations.

20 Q. So we talked a little bit about speed. Um, Frontier
21 considers itself nimble, correct?

22 A. Probably one of the most.

23 Q. And I believe you said that the assets are
24 incredibly mobile, correct?

25 A. Yes.

1 Q. And that is something that's unique to the airline
2 industry?

3 A. Correct. Well I'm sure there's other industries
4 that have mobile assets.

5 Q. How quickly can Frontier enter a route once it
6 decides to?

7 A. How quickly? If it can be flown from a base, um --
8 if we're already in the other city, it could be done
9 within three or four months. If we're not in the other
10 city, we would need closer to 6 months.

11 Q. But you would still consider that opportunity even
12 if you're not in both cities, correct?

13 A. Oh, sure.

14 Q. I think you said earlier that you start new dots on
15 the map all the time?

16 A. Um, yes.

17 Q. (Pause.) All right. So let's talk about Frontier's
18 fleet growth.

19 Based on Frontier's most recent security filings,
20 Frontier has 134 planes in its current fleet, correct?

21 A. If that's the exact number, sure.

22 Q. That sounds, right?

23 A. That sounds right, 134. There's constantly lease
24 returns and there's deliveries, so -- we delay now and
25 then.

1 Q. In addition to your existing planes, you've entered
2 several contracts to substantially increase your order
3 books, correct?

4 A. Yes.

5 Q. And how many planes does Frontier currently have on
6 order?

7 A. Over 200.

8 Q. Does 234 sound right?

9 A. As of this second? Close.

10 Q. As of your securities filing?

11 A. Sure.

12 Q. And I believe you testified these planes are a mix
13 of A320s and A320 NEOs, right?

14 A. Yes.

15 Q. And those planes are higher gauged than what you're
16 flying today?

17 A. Um, well, no, not necessarily. I mean so the 320
18 NEO has 240 seats in our configuration and we have 186
19 on the 320 and we have those both in our fleet. It does
20 move my average seats up because of the proportion of
21 321s that we're taking, if that's what you mean. But
22 they're the same airplane as we take. We have now taken
23 more 321s in the future.

24 Q. Thank you for that. How much has your average gone
25 up?

1 A. So average seats per departure has gone up from, um,
2 I forget the number, but it was in the 150s when I came
3 to the company, per departure. We're well over 200 now.

4 Q. Now these planes that you've ordered coming in, have
5 you started taking delivery of some of those?

6 A. Well so we haven't taken delivery of the last order
7 that we just placed, but the one that we placed like
8 five years ago, yes.

9 Q. And Frontier expects to take delivery of the
10 remaining planes on an incremental basis between now
11 through 2029, correct?

12 A. Some will be lease returns to my existing fleet. So
13 they'll not -- they will not all be incremental.

14 Q. So let's break it down. So you have 234 planes on
15 order, right?

16 A. Yes.

17 Q. And you will receive those 234 planes on an
18 incremental basis between now and 2029?

19 A. Okay, so when I say "incremental," I normally take
20 entries minus lease returns. But, yes, they would all
21 be incremental. And then I would minus any lease
22 returns.

23 Q. Okay, so let's put the lease returns and any
24 retirement to the side.

25 A. Sure.

1 Q. Just for the 234 coming in, those are coming in over
2 the next five years on a regular basis.

3 A. It's a little longer than five years, but mostly in
4 the next five.

5 Q. So if you could turn to Exhibit 702, I believe that
6 is in the smaller binder -- it might be the binder in
7 front of you. It says "Binder 2." They'll also be on
8 the screen.

9 A. (Looks.)

10 Q. So if we could just -- this is Frontier's most
11 recent 10Q filing, correct?

12 A. Okay.

13 Q. And this was filed just weeks ago on October 23rd,
14 2023.

15 A. Okay.

16 Q. You agree with that?

17 A. Yes.

18 Q. And you're familiar with this securities filing?

19 A. Yes.

20 Q. Okay, so if you could turn to Page 17, which is
21 Bates ending in 1650.

22 A. (Turns.)

23 Q. Okay. Do you see this chart here under "Flight
24 Equipment Commitment"?

25 A. Yes.

1 Q. And this chart shows the plan delivery of the
2 200-plus planes that you have coming in over the next
3 few years, right?

4 A. Yes.

5 Q. Okay. So you can keep that document open, but I'll
6 also show Biffle Demonstrative 3. Which if you'd like
7 to see it, um, it's also in your binder. But it will
8 come up on the screen as well.

9 So we've established that Frontier's current fleet
10 is 134 planes, right?

11 A. Yes.

12 Q. Now according to the chart that you just looked at,
13 Frontier will receive another 4 planes this year,
14 correct?

15 A. I believe that's right.

16 Q. And 23 planes in 2024, correct?

17 A. Yes.

18 Q. And 42 planes by 2025? Correct?

19 A. Yes.

20 Q. And 41 planes by 2026, right?

21 A. Yes.

22 Q. And 42 by 2027, correct?

23 A. Yes.

24 Q. And after 2027, Frontier will receive another 62 new
25 planes, right?

1 A. Yes.

2 Q. Now this timeline is accurate to Frontier's best
3 knowledge as of the date of the filing, correct?

4 A. That's correct.

5 Q. And if you look in the back to the exhibit in the
6 securities filing, there's a footnote, right?

7 A. Yes.

8 Q. And it says "While the schedule presented reflects
9 the contractual delivery dates as of September 30th,
10 2023, the company has recently experienced delays in the
11 deliveries of Airbus aircraft," correct?

12 A. Yes.

13 Q. And so what you're saying, Mr. Biffle, is there
14 might be some lumpiness, right?

15 A. That's pretty accurate.

16 Q. But as of the date of this filing, this chart -- and
17 showing the incremental delivery of aircraft, was
18 accurate to the best of the company's knowledge?

19 A. That's the agreement we have in the notices we've
20 received so far.

21 Q. Okay. And then as of the date of the filing, that
22 was --

23 A. As of that date, yes.

24 Q. Now I believe when you were talking to the DOJ
25 earlier you described some of these delays as "near

1 term," right, and "more acute" in the beginning, is that
2 fair?

3 A. Yes.

4 Q. So generally the delays, the pain of the delays is
5 behind you, right?

6 A. It's not behind us, but the volatility in the
7 majority of the pain is in the beginning, um, it's -- we
8 can deal with changes, it's just that when they're very
9 close in, it's extremely impactful to our costs, our
10 operations, and the customers.

11 Q. And now that you're aware of the delays, are you
12 able to adapt a little bit to what you have already
13 learned?

14 A. Some. Um, we are trying to build in the best
15 buffers we can.

16 Q. And these opportunities that we've talked about this
17 morning, can you pursue those opportunities just from
18 the planes that you have coming in?

19 A. Um, which opportunities?

20 Q. Sorry, the various opportunities that we talked
21 about that may arise after the merger, do you have the
22 planes coming in to take advantage of those?

23 A. Oh, with the one --

24 MR. DIMARCO: Objection.

25 THE COURT: No, overruled.

1 A. I believe we have the planes. Um, I don't believe
2 that we would be the ones that would replace them flight
3 for flight, seat for seat, right? I mean I think the
4 market would. And other people would get to those
5 opportunities long before we ever could. But I think
6 that we would probably have, um, our fair share if we
7 moved fast enough. Right?

8 Q. And if there are opportunities that you want or
9 Frontier wants, you believe you have the aircraft to
10 chase those?

11 A. Yes, and I believe we're probably in a better
12 position because of our base structure, um, and our
13 scale, we're probably in a better position than most to
14 exploit it.

15 Q. Now if you do have to pull planes from routes to
16 service certain opportunities, you would target the
17 underperforming routes first, right?

18 A. Oh, in my existing network?

19 Q. Right.

20 A. Sure. Yeah.

21 Q. You wouldn't pull from your highest demand routes?

22 A. No. And you wouldn't necessarily have to pull it
23 completely. Like one of the ways you could do it is
24 just reduce frequency and not pull out, right? You
25 could actually create multiple aircraft to exploit

1 these, um, but you wouldn't have to just kill routes.

2 It's not that binary. Right?

3 Q. (Pause.) All right. So a new topic.

4 Earlier you were talking about gate constraints
5 with the Department of Justice. Do you remember that?

6 A. Sure.

7 Q. And would you agree that gate constraints are
8 prevalent in legacy hub cities?

9 A. As a general rule, yes.

10 Q. And I believe you named a number of cities in which
11 you felt constraints, Atlanta, Dallas, correct?

12 A. Yes.

13 Q. None of those constrained airports are in Florida,
14 are they?

15 A. No.

16 Q. In fact Frontier has a large presence in Florida?

17 A. It's our largest operation.

18 Q. And do you face any gate constraints in San Juan?

19 A. No.

20 Q. Cancun?

21 A. Um, no.

22 Q. In fact you've had no issues growing in San Juan or
23 Cancun, right?

24 A. No.

25 Q. All right. I'd like to pull up Biffle Demonstrative

1 1. Okay.

2 So earlier you testified that Orlando, Miami, and
3 Tampa, are Frontier bases, right?

4 A. Yes.

5 Q. So you have three bases in Florida?

6 A. Yes.

7 Q. And then San Juan and Cancun are Frontier focus
8 cities, correct?

9 A. Yes.

10 Q. And so you see those cities listed on this side?

11 A. Yes.

12 Q. So based on what Frontier has on its website today,
13 does Frontier fly 44 routes out of Orlando, does that
14 sound right?

15 A. I thought the number was higher, but if that's what
16 it says, sure. I think that may be a seasonal number,
17 that the year-round number is higher.

18 Q. What do you think the year-round number to be?

19 A. It's higher than that, but I don't know the exact
20 numbering.

21 Q. Okay. And again based on the website, does 19
22 routes out of Tampa sound right?

23 A. In that area code, yeah.

24 Q. And 19 routes out of South Florida, which includes
25 Miami and Fort Lauderdale?

1 A. Very close, yeah.

2 Q. So Frontier flies roughly 80 routes collectively
3 from Florida?

4 A. Easily, yeah.

5 Q. Now we also have San Juan on here as a focus city.
6 Frontier has been expanding its presence in San Juan
7 over the past few years?

8 A. Yes.

9 Q. And Frontier has 15 routes out of San Juan, right?

10 A. Sounds right.

11 Q. And Cancun is another focus city and you operate 14
12 routes out of Cancun, right?

13 A. If that's the count, yeah.

14 Q. Does Frontier serve more routes in and out of Puerto
15 Rico than any other airline?

16 A. Yes.

17 Q. And more routes to San Juan than any other airlines?

18 A. Yes.

19 Q. More broadly, how many international destinations
20 does Frontier fly today?

21 A. Um, 15ish. Somewhere in there. In the teens.

22 Q. And which locations do you fly to, um,
23 international?

24 A. Internationally a couple of points in Mexico. We
25 fly to Punta Cana, Santa Domingo, um, it's considered

1 U.S., but we consider international Saint Thomas, Saint
2 Martin. We fly to Cancun, Casa Mora, Salvador,
3 Guatemala. I might have missed one or two in there.
4 Jamaica. Bahamas.

5 Q. The Dominican Republic?

6 A. Yes, Santa Domingo and Punta Cana, those are both
7 Dominican Republic.

8 Q. And those are all routes in Latin America and the
9 Caribbean, right?

10 A. Yes.

11 Q. And could you provide service to places like Aruba?

12 A. Yes.

13 Q. Haiti?

14 A. Yes.

15 Q. And so those are opportunities that exist for
16 Frontier?

17 A. They're the ones we're looking at now.

18 Q. What interest does Frontier have in developing more
19 routes in these mere international destinations?

20 A. We have, um, a great desire to grow in
21 international. We have demonstrated that over the last
22 several years.

23 THE COURT: Ms. Bansal, we're only going to take a
24 brief recess this morning because we're stopping at
25 12:30. But sometime I need to take a recess. About how

1 much more do you have?

2 MS. BANSAL: I have about 15 minutes, your Honor,
3 we can break now.

4 THE COURT: 15 minutes? Well we'll go on.

5 Q. Mr. Biffle, does Frontier also monitor the entry and
6 capacity of foreign ULCCs?

7 A. Yes.

8 Q. Particularly the ones that operate in and out of
9 Florida?

10 A. Sure.

11 Q. Can you name a number of foreign ULCCs that you
12 monitor?

13 A. Um, well we've monitored the Airbuse, Volaris, we
14 did, um, Viva Colombia was one of them, but they have
15 now been merged into Avianca.

16 Q. All right. So you testified earlier that Frontier
17 has a contract to acquire certain assets from JetBlue at
18 the marine air terminal in La Guardia, right?

19 A. Yes.

20 Q. And that includes 11 slot pairs and all of Spirit's
21 gates, correct?

22 A. Yes.

23 Q. Why did Frontier want these assets?

24 A. Because they don't come available very often and
25 they are highly desirable and what little flying we do

1 do at La Guardia is very successful today.

2 Q. And why are they desirable?

3 A. Because there aren't any more available.

4 Q. So La Guardia has a constrained airport?

5 A. The most.

6 Q. Hard to get the slots?

7 A. Impossible.

8 Q. So this is the only way for Frontier to grow in La
9 Guardia in your opinion?

10 A. It's the only near-term opportunity we're aware of.

11 Q. And how many routes does Frontier operate out of La
12 Guardia today?

13 A. Um, three or four.

14 Q. And how many routes could Frontier operate with the
15 11 slot pairs?

16 A. Well with the -- with the gates we think we could do
17 a little more because we think we could do over the 11
18 because we could operate off slot time. So we think we
19 could get it to 12, 13, no problem.

20 Q. So that is somewhere between 3 and 5 times its
21 current service, is that fair?

22 A. Oh, sure. And we would -- as a gauge we would, you
23 know, we would also offer more seats, because we fly
24 more seats than Spirit. So those slots would even have
25 more seats than they do today too.

1 Q. And so you're saying Frontier flies more seats out
2 of La Guardia than Spirit does today?

3 A. Per departure we do because we have larger density,
4 we have 240 seats.

5 Q. More seats per departure than Spirit?

6 A. Correct.

7 Q. So there would be more seats flying out of La
8 Guardia after the assets transfer?

9 A. Most likely, yes.

10 Q. And these assets will enhance your growth?

11 A. Yeah.

12 Q. And will improve your flexibility for growth?

13 A. It won't improve our flexibility, but it would, um,
14 it would definitely derisk the growth because there
15 would be -- as we discussed, they would leave markets
16 that actually aren't fully mature.

17 Q. Now I believe you talked about, with the Department
18 of Justice earlier, that you don't have concrete plans
19 for the assets in La Guardia, is that fair?

20 A. That's right.

21 Q. But you testified that you would use the assets to
22 their best and highest use, correct?

23 A. Correct.

24 Q. And what does "best and highest use" mean to you?

25 A. Well the fares are highest, the consumers are paying

1 the most, so we would most likely deploy the assets to
2 there if we could make it work operationally.

3 Q. And as we discussed earlier, some of these routes
4 that Spirit may leave, those are also routes that would
5 go to the top of your list, right?

6 A. Yeah, you would look at those probably first because
7 they're proven. But there may be -- because of market
8 dynamics, there may be something that's -- I'm just
9 making this up, but maybe somewhere they fly, um,
10 there's so much competition on it and the fares are low,
11 that there's a much better opportunity to fly to some
12 other city. We would have to be very thoughtful about
13 that situation.

14 Q. The best and highest use could include filling any
15 vacuum left by Spirit out of La Guardia?

16 A. It could be theirs or somebody else's. I don't
17 know.

18 Q. And after the La Guardia assets' transfer, how
19 quickly could Frontier announce this service out of New
20 York?

21 A. Um, I think it would be within weeks of the closing.
22 But we would start them months later. But like we could
23 announce it, right? You'd want to do a thing like
24 Spirit is going to have customers that are already on
25 the books, you're going to want to respect those, so

1 like you're going to have a smooth transition to those
2 customers as well as selling new tickets.

3 Q. All right. When you signed the contract, you knew
4 that the Port Authority of New York and New Jersey would
5 be involved, correct?

6 A. That they would be involved?

7 Q. That they would have to approve the transfer,
8 correct?

9 A. Sure.

10 Q. That wasn't a surprise?

11 A. No.

12 Q. And if the assets do transfer, you will use them to
13 vigorously compete, correct?

14 A. Yes.

15 Q. And you will offer low-cost fares to consumers in
16 and out of New York, correct?

17 A. Correct.

18 Q. And you will consider using the slots to fill
19 Spirit's former routes out of New York, right?

20 A. Probably first.

21 Q. Yes, exactly. And those routes would go to the top
22 of your list, correct?

23 A. Yes.

24 Q. Okay.

25 MS. BANSAL: Thank you, Mr. Bansal.

1 THE COURT: All right. We'll take the --
2 Do you have anything else?

3 MR. DIMARCO: Yes, your Honor, I'll have a
4 redirect.

5 THE COURT: About how long?

6 MR. DIMARCO: 10 or 15 minutes.

7 THE COURT: We'll take the recess.

8 All right, we'll take the recess for 15 minutes
9 this morning, and we'll recess until 25 minutes after
10 11:00. We'll stand in recess.

11 THE CLERK: All rise.

12 (Recess, 11:10 a.m.)
13

14 C E R T I F I C A T E
15

16 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
17 do hereby certify that the foregoing record is a true
18 and accurate transcription of my stenographic notes
19 before Judge William G. Young, on Tuesday, November 14,
20 2023, to the best of my skill and ability.
21
22

23 /s/ Richard H. Romanow 11-14-23

24 _____
RICHARD H. ROMANOW Date
25